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02-6235-23	"ORDER" pursuant to opinion of JJ. CLAY and GIBBONS; CLELAND sitting by designation, affirming Exhibit 02-6235-04 hereinabove, entered 05/02/03	22

CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 5th day of June, 2003, served two (2) true and complete copies of the foregoing "AMENDED PETITION FOR EN BANC DETERMINATION" upon each opposing party, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings.**)

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

[END OF DOCUMENT]

Case Number: 02-6235

IN THE

United States Court of Appeals for the Sixth Circuit

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, *et al,*

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Kentucky-Lexington Division

FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT

This document was prepared by:
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(d) CBT Does 1 - 40 [known only as a group of "persons" at Central Bank & Trust Company, Inc., Lexington, Kentucky]; (h) SCC Does 1 - 50 [known only as a group of "persons" at Southland Christian Church of Lexington, Inc., Nicholasville, Kentucky]; (l) FCS Does 1 - 30 [known only as a group of "persons" at the Fayette County (Kentucky) Sheriff's Office, Lexington, Kentucky]; (p) CAO Does 1 - 20 [known only as that group of "persons" at the Commonwealth's Attorney's Office for Kentucky's Twenty-second Judicial District, Lexington, Kentucky]; & (q) FCC Does 1 - 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky] **as yet unidentified.**

---

[1] The Commonwealth of Kentucky **has not been named** as a party hereto.

[2] The L.F.U.C.G. was not originally named as a party hereto, but will be added due to voluntary entry herein.

INTRODUCTION

"**'Wrongfully imprisoned' wife beaters are not a protected class under § 1985.**" [D. Brent Irvin, Asst. Atty. Gen., Commonwealth of Kentucky, 01/07/2003]

That single statement, made by Kentucky Assistant Attorney D. Brent Irvin at page 31, lines 7 & 8 of his "APPELLEES' BRIEF" on behalf of Defendants-Appellees Thomas Clark, Rebecca Overstreet, Pamela Goodwine, Lou A. Red Corn, Todd Ferguson, & Cindy Schwartz [D.E. of 01/09/2003], **more than any other** made throughout the entirety of Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle Tennessee District-Nashville Division on November 21, 2000 [Case No 3:00cv1142 therein] and its underlying criminal actions within the Courts of Kentucky, epitomizes Kentucky's theories and attitudes toward "domestic violence". **In other words**, in Kentucky, once a man is **even so much as accused** of "domestic violence", he has automatically and instantaneously forfeited all rights, privileges, and immunities otherwise secured by the United States Constitution.

Akers has never suggested that his two (2) fraudulent imprisonments were cognizable under Title 42 U.S.C. § 1985 but, rather, that such were "overt acts" in the furtherance of those "chain conspiracies" detailed within Akers' "PETITION FOR WRIT OF CERTIORARI" filed and served on April 24, 2002 [Exhibit 02-6235-11, Joint Appendix, *viz*, "COUNT ONE" through "COUNT FOUR", pages 251 through 253 thereof; "COUNT TWELVE", pages 256 & 257 thereof; & "COUNT TWENTY-THREE, page 268 thereof]. The **conspiracies** are cognizable under Title 42 U.S.C. § 1985(3). All "overt acts" in the furtherance of those "conspiracies"/"chain conspiracies" are cognizable under Title 42 U.S.C. § 1983. Moreover, **both accused and even guilty**...

"wife beaters" are entitled to the **very same** (a) equal protection under the law; (b) guarantees against "double jeopardy", "abuse of process", and fraudulent imprisonment; & (c) rights to "due process" under the United States Constitution as are child molesters, rapists, murderers, and **even hooligan judges, prosecutors, and/or attorneys general of a state**. [see ***Cruz v. Beto***, 405 U.S. 319 (1972), i.e., "Federal courts sit not to supervise prisons, **but to enforce the constitutional rights of all 'persons'**, which include prisoners" (emphasis added)].

Each of the Defendants-Appellees have, at one time or another, complained about the "voluminous" nature of Akers' Complaint. Bennett E. Bayer, counsel for Defendant-Appellee Witt, even refers to it as "a devilish document to comprehend" [D.E. #6 of 01/21/2003, page 3, lines 1 & 2]. Notwithstanding, however, Bayer acknowledges that "[b]eginning at the bottom of page 19, Akers distills the entire complaint into a summary of the counts and the 'actors' who are subject to each count" [*id.*, page 10, ¶2, lines 1 & 2]. Bayer, as does all other counsel for the respective defendants-appellees, fails to acknowledge that those said counts specifically reference the factual allegations within preceding portions of the complaint **in great detail**, and specifically references corresponding portions of Akers' therewith and contemporaneously-filed "MEMORANDUM & MEMORANDUM OF LAW" - additionally referencing the specific Constitutional, Statutory, and Common Law provisions which have been violated. Bayer further acknowledges, in detail, at page 11, ¶ 3, of his brief, **the specific "Claim(s) for Relief"** against Witt.

Bayer's arguments, **like those of all other defense counsels**, simply "**do not compute**". Moreover, with all due respect, **it is this case which is "devilish"** and/or "**voluminous**". Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and "MEMORANDUM & MEMORANDUM OF LAW" (hereinafter "Akers' Complaint") are merely reflective of that fact - **not a contribution to that fact**.

Just as the Defendants-Appellees have correctly pointed out, Akers' Complaint, as filed, is a total of 134-pages in length. However, it must be understood that there are at least sixteen (16) defendants who have been specifically named therein. Not even considering the verbiage which is specifically allocable to the potentially two hundred ten (210) Does who have yet to be identified due to foreclosure of discovery by the District Court, this equates to an average of only 8 3/8 pages per defendant. **By any recognizable standard**, this is not a daunting volume for any defendant to answer. Nonetheless, today (more than two years subsequent to service and filing), not even a single Defendant-Appellee has attempted to file an answer to Akers' Complaint and the reason is quite obvious. **Not even a single defendant can deny even a single averment** without subjecting themselves to yet further sanctions and/or penalties under Federal Law and their only options are to either: (a) "Admit" the factual allegations against them - triggering a "Summary Judgement" in favor of Akers; (b) claim "insufficient knowledge with respect to" those factual allegations - triggering either appropriate discovery or, in most instances, sanctions and/or criminal penalties under Federal Law; or (c) "Deny" the factual allegations against them - almost certainly triggering a Federal cause for "Obstruction of Justice". In short, the Defendants-Appellees are "between a rock and hard place" and their herein strategies of deploying all the confusion, delay, and "technicalities" they can muster are no more than a reflection of their untenable predicament.

In an attempt to have Akers' "BRIEF FOR APPELLANT", as timely served and filed on November 14, 2000, "STRICKEN", many of the Defendant-Appellees argued that Akers' had attempted to circumvent the limitations imposed by F.R.A.P. 32(a)(7)(C) by "incorporating by reference" some of his pleadings in the Courts below. Cited, ***inter alia***, was the case of ***DeSilva v. DiLeonardi***, 181 F.3d 865. However, the only proper application of that case herein is that, **just like the DeSilvas**, these Defendants-Appellees are " now are out of arguments" [*id.*, {*868}].

First, it is necessary to address the "APPELLEES' BRIEF" [D.E. of 01/09/03], filed and served January 7, 2003, by Kentucky Assistant Attorney General D. Brent Irvin, on behalf of Defendants-Appellees Thomas Clark, Rebecca Overstreet, Pamela Goodwine, Lou A. Red Corn, Todd Ferguson, and Cindy Schwartz, i.e., as follows:

> (a) Primarily because of the provisions of the Eleventh Amendment to the United States Constitution, **the Commonwealth of Kentucky has not been named** as a party to the within civil action. Otherwise, it would have been a "sitting duck" for liabilities in view of the role of its Governor, Attorney General, and both Fayette District & Circuit Courts in this overall matter;
>
> (b) Secondarily, **Akers has absolutely no intention or wish** to obtain monetary relief from the Kentucky state treasury. Not only would that be nearly impossible in view of controlling case law, but it would, as well, be unreasonable to hold those innocent taxpayers of the **entire state of Kentucky** accountable for the unlawful acts of corrupt officials within only two (2) counties, i.e., Fayette and Franklin. Akers seeks redress against only the individual "persons" named in his complaint – **not the entire Commonwealth of Kentucky**;
>
> (c) Akers has requested, **from the very outset of this case**, that the Kentucky Attorney General's office either tender an "express waiver of Eleventh Amendment immunities" or cease to file pleadings herein. Clearly, Irvin and those Defendants-Appellees he purports to represent should not be permitted to have "the best of both worlds" in protecting the Kentucky state treasury by asserting immunities pursuant to the Eleventh Amendment while, at the same time, expending those same funds in defense of Defendants who have committed criminal and/or otherwise unlawful acts in their individual private...

...capacities. [see, e.g., ***Collins v. Chandler Unified School Dist.***, C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163, i.e., "This section [42 U.S.C. § 1983] is broad and unequivocal and **must be liberally construed** to achieve congressional purpose of encouraging **compliance with and enforcement** of civil rights laws" (emphasis & clarification added); ***Dennis v. Chang***, C.A.9 (Hawaii) 1980, 611 F.2d 1302, i.e., "This section [42 U.S.C. § 1983] **must be liberally construed** to achieve **congressional purpose to encourage compliance with and enforcement of** civil rights laws"(emphasis & clarification added); ***Donaldson v. O'Connor***, N.D.Fla. 1978, 454 F.Supp. 311, i.e., "This section [42 U.S.C. § 1983] is to be construed to **fulfill congressional purpose of encouraging private litigation to enforce civil rights**" (emphasis & clarification added); & ***Johnson v. Summer***, N.D. Miss.1980, 488 F.Supp. 83, i.e., "This section [42 U.S.C. § 1983], providing for attorney fees in civil cases, **is to be broadly and liberally construed to achieve its intended purpose** to compensate counsel who represents prevailing litigants on civil rights claims and **to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights**, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**" (emphasis & clarification added)];

(d) To whatever extent, as Irvin argues, that Akers "waived" any arguments, rights, and/or privileges within his "AMENDED BRIEF FOR APPELLANT" as served and filed December 5, 2003, and to which Akers would otherwise be lawfully entitled, **those same arguments, rights, and/or privileges are hereby renewed, re-asserted, and reiterated herein, in their entirety**; &

(e) Notwithstanding, however, lest this Honorable Court or any of the Defendants misconstrue Akers' objections and opposition to the filing of **any pleadings** in this case by Mr. Irvin as either a concession or acceptance of any validity thereof, Akers will discuss, ***infra***, some of the most egregious assertions by Mr. Irvin.

Secondly, it would seem only prudent to address the "letter" filed on behalf of Defendant-Appellee Carolyn P. Bishop (hereinafter "Bishop) on 12/13/03, i.e., as follows:

(a) Bishop has "chosen not to file an appellee's brief" - purportedly because she "chooses to rely on" the "sound and well reasoned" "opinion and order of District Judge Jennifer Coffman";

(b) It comes as no surprise that Bishop would do so, especially inasmuch as that "opinion and order" **virtually parallels** Bishop's "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" as filed in United States District Court for the Eastern District of Kentucky on 09/17/02. To whatever extent that ***ex parte*** communication has occurred, Akers cannot say. **The similarities, however, are simply too striking to ignore**; &

(c) Akers has, nonetheless, **extensively** addressed all arguments presented by Bishop in her said "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" in his "RESPONSE & OBJECTIONS TO: 'RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS'" as served and filed in United States District Court for the Eastern District of Kentucky [see Exhibit 02-6235-22, Joint Appendix at pages 832-873]. By virtue thereof, Akers has also addressed extensively the District Court's instant "JUDGEMENT" and accompanying "MEMORANDUM OPINION AND ORDER, DISMISSING" Akers' entire case.

COUNTER-STATEMENT OF THE CASE

Regardless of the amount of effort which the Defendants-Appellees are willing to expend and any credibility they may be able to falsely project by virtue of their sheer numbers, the within case revolves around those issues succinctly presented in Akers' "STATEMENT PURSUANT TO F.R.A.P. 28(a)(6) & (7)", "AMENDED BRIEF FOR APPELLANT", served on December 5, 2003.

The Defendants-Appellants appear to be of the belief that if enough of them present the **very same frivolous arguments - enough times - citing the very same misapprehended and/or inapplicable "authorities" in support** - that their arguments will **somehow, magically**, acquire some degree of merit. The following are but a few of their such arguments:

Kentucky Assistant Attorney General D. Brent Irvin asserts as follows:

> "After years of physically and mentally abusing his former wife, and enraged by resulting criminal convictions, the appellant James Akers, decided to abuse her yet again - and anyone else remotely connected to the criminal cases - by filing harassing, vindictive, and frivolous civil rights suits against them" [Irvin's "Appellees' Brief", D.E. of 01/09/03, page 2, ¶2, lines 1-4];

Defendant-Appellee Katherine H. Witt follows suit as follows:

> "Regardless of anything else involved in his complaint, it is essentially in response to a criminal complaint brought by his ex-wife, **for having assaulted and stalked the woman for years**."(Brief of Appellee Katherine Witt, D.E. #6 of 01/21/2003, page 2, ¶ 3, lines 2 - 4, emphasis added)];

Defendant-Appellee Doris Fleming furthers as follows:

> "In 1994, Bishop sought an emergency protective order from the Appellant in the Fayette District Court in the Commonwealth of Kentucky resulting from Appellant's threats and domestic problems between Appellant and Bishop" [D.E. #1 of 01/17/2003, page 2, ¶ 2, lines 1 - 3]. "Appellant continued to harass Bishop and he was eventually indicted for assaulting and stalking Bishop" [*id.*, page 2, ¶ 2, line3 - page 3, lines 1 & 2].

The simple truth is that, except for fraudulent testimony of Defendant-Appellee Bishop, who has obviously either become a pathological liar or has been sufficiently "brain-washed" by her...

...herein co-Defendants-Appellees to the point that she no longer recognizes the truth, **there is no evidence whatsoever** to support such outrageous conclusions; there are no medical records or law enforcement agency records to support such conclusions; **and** the testimony of even **Bishop's very own sons** contradicted any such conclusions. Moreover, Bishop has already admitted that she and her "accessories" violated Kentucky's own K.R.S. 514.030 by removing and destroying physical evidence which would have conclusively shown her testimony to be fraudulent.

As if destruction of Akers' marriage, family, home, and two (2) successful businesses – **all for no purpose other than to secure and perpetuate their own ambitions** – were not enough, these Defendants-Appellees find it necessary to continue to drag Akers' name and reputation "through the mud", clearly because they refuse to accept responsibilities for **their own acts**.

COUNTER-STATEMENT OF FACTS

The facts underlying the within case are as set forth, in detail, within Akers Complaint and as recapitulated at pages 8-12 of Akers' "AMENDED BRIEF FOR APPELLANT" filed herein on December 5, 2003. Again, **not <u>even a single</u>** Defendant-Appellee has attempted to controvert **<u>even a single</u> averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)"[3] inasmuch as as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the...

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[3] <u>Once again</u>, Defendant Carolyn P. Bishop has essentially admitted having committed the predicate acts of "theft by unlawful taking or disposition (over $300.00)" & "tampering with physical evidence", both being felonies under Kentucky Law and, therefore, violations of Title 18 U.S.C. § 1964(c); Defendant Jerry L. Kelly has essentially admitted having committed the predicate act of "forgery in the second degree", a felony under Kentucky Law and, therefore, a violation of Title 18 U.S.C. § 1964(c) if coupled with an additional such "predicate act"; and Defendants Pamela Miller & Katherine Witt have essentially admitted the fundamental elements of "conspiracy", in violation of Title 42 U.S.C. § 1985(2) & (3). [See Akers' allegations with respect thereto within Akers' Complaint, Exhibit 02-6235, Joint Appendix at ¶¶142(c) & (d), 144(a), & 128, respectively]

Defendants-Appellees **<u>cannot deny the factual allegations against them</u>** without subjecting themselves to still further sanctions and/or penalties under Federal Law. **The <u>merits of Akers's herein case</u> just, simply, <u>can not be challenged</u>.**

<u>Defendant Doris Fleming fraudulently alleges</u>:

(a) "Many if the Defendants (including Doris Fleming...) were named in Appellant's 1999 civil rights action" [D.E. #1 of 01/17/2003, page 4, ¶ 2, lines 1 & 2]. "Doris Fleming was a witness on behalf of Appellant's

ex-wife in the underlying divorce/domestic abuse action. Essentially, Appellant named Ms. Fleming as a party to this action because she was an unfavorable witness against his interests in the divorce/domestic abuse case" [*id.*, page 4, ¶ 2, lines 5 - 9];

(b) "Akers bases his claims on the 2000 Kentucky Court of Appeals decision reversing his assault conviction" [*id.*, page 4, ¶ 3, lines 2 - 4]. "That same court decision affirmed the 1998 stalking conviction rendered by the same proceeding" [*id.*, page 4, ¶ 3, lines 4 - 5]; &

(c) "All individuals who testified against Akers in the Fayette Circuit Court actions ...have been named as Defendants/Appellees and Akers alleges that those individuals acted as conspirators to violate his civil rights" [*id.*, page 5, ¶ 3, lines 1 - 3].

(A) Doris Fleming **was not named** as a defendant in Case No. 5:99cv0173 and, even had she been, that case was dismissed "**without prejudice**" pursuant only to the Prison Litigation Reform Act and that would have had **no bearing whatsoever**, upon the instant case. Moreover, Doris Fleming was **not a witness at a single one** of Akers' "divorce/domestic violence" proceedings, nor is she a "party to this action because she was an unfavorable witness" to any such action. The simple truth is that Defendant-Appellee Doris Fleming is so named in the instant case **for no reason other than those delineated** within Akers' Complaint and Memorandum;

(B) Akers neither bases his herein claims "on the 2000 Kentucky Court of Appeals decision reversing his assault conviction", **nor does he need to** [see, e.g., Akers' "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02, at FN7, page 16 thereof, i.e., as follows:

> "The underlying 'criminal' cases originate from a series of events leading to what, **at its worst**, could be legally construed as nothing more than a misdemeanor 'assault under extreme emotional disturbance' [see. e.g., Case No. 5:02cv0162, D.E. #29, ¶ 7(b) & FN7...

...thereto] i.e., '**Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of 'assault' of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see 'OFFENSE, PENALTY AND BAIL SCHEDULE', APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional ***'ex post facto'* enhancement** under the disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/ enhanced 'Domestic Violence & Abuse' laws and, **only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2)**." [see also, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, FN8, page 12 thereof]. Moreover, **there can be absolutely no question** that Akers had been – **at least twice – already fully-punished** for the events of May 4th and/or 5th, 1994 [see, e.g., ¶¶E-34 with FN44 thereto, E-37, E-38 with FN49 thru FN53 thereto, E-51 with FN81 thereto, and E-81 with FN76 thru FN82 thereto of Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at pages 538-593, ¶¶E-34 w/FN44 thereto, E-37, E-38 w/FN49 thru FN53 thereto, E-51 w/FN81 thereto, & E-81 w/FN76 thru FN82 thereto]. Not even considering the elements of malice, abuse of process, and fraud, ***inter alia***, Akers' convictions for **any charge** related to May 4th/5th, 1994, **was barred** by either the statute of limitations **and/or** the Fifth Amendment to the U.S. Constitution. **Clearly, there was no actionable 'criminal' basis for any manner of 'assault'** charges against Akers and therefore, **there could have been no jurisdiction**."

See also: ***North Carolina v. Pearce***, 89 S.Ct. 2089 (1969), i.e., "[727]...The theory of double jeopardy is that a person need run the gantlet only once. The gantlet is the **risk of range of punishment** which the State...imposes for that particular conduct. He risks the **maximum permissible punishment when first tried**. **That risk having been faced once** need not be faced again. **And the fact that he takes an appeal does not waive his**

constitutional defense of former jeopardy to a second prosecution. ***Green v. United States***, 355 U.S. 184, 191-193, 78 U.S.Ct. 221, 225, 227, 2 L.Ed. 2d 199. ...It is argued that this case is different because there were two different crimes with different punishments for each one. That, however, is a matter of semantics. 'It is immaterial to the basic purpose of the constitutional provision against double jeopardy whether the Legislature divides a crime into different degrees carrying different punishments, or [728] allows the court or jury to fix different punishments for the same crime'. ***People v. Henderson***, 60 Cal. 2d 482, 497, 35 Rptr. 77, 86, 386 P.2d 677, 686 (1963) (Traynor, J.) ...'It was established at an early date that the Fifth Amendment was designed to prevent an accused from [729] **running the risk of 'double punishment'**. ***United States v. Ewell***, 383 U.S. 116, 124, 86 S.Ct. 773, 778, 15 L.Ed.2d 627. When Madison introduced to the First Congress his draft of what became the Double Jeopardy Clause, it read: 'No person shall be subject, except in cases of impeachment, to *more than one punishment* or one trial for the same offense * * * (Emphasis supplied) 1 Annals of Cong. [434]. ...'By forbidding that no person shall be subject for the same offense to be twice put in jeopardy of life or limb, [the safeguard of the Fifth Amendment against double punishment] guarded against the repetition of history by * * * punishing [a man] for an offense when he had already suffered the punishment for it.' ***Roberts v. United States***, 320 U.S. 264, 276, 64 S.Ct. 113, 119, 88 L.Ed. 41, (Frankfurter, J., dissenting). 'The inquiry, then, is into the meaning of 'double' or 'multiple' punishment. In ***Ex parte Lange***, 18 Wall. 163, 21 L.Ed. 872, the petitioner...[730]...had **already suffered**...

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...**complete punishment for his crime and could not be subjected to further sanction**: 'If there is anything settled in the jurisprudence of England and America, it is that **no man can be twice lawfully punished for the same offence**.' And though there have been some nice questions in the application of this rule to cases in which the act charged was such as to come

within the definition of more than one statutory offence, there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offence.' *Id.* at 168. ...It was not until ***United States v. Benz***, 282 U.S. 304, 51 S.Ct. 113, 75 L.Ed. 354, that the Court clarified its position. ...'The general rule is that judgements, decrees and orders are within the control of the court during the term in which they were made. * * * The rule is not confined to civil cases, but applies to criminal [731] cases as well, *provided that the punishment not be augmented*, ***Ex parte Lange***, 18 Wall. 163, 167-174, 21 L.Ed. 872 [additional citations omitted]. In the present case the power of the court was exercised to mitigate the punishment, not to increase it, and thus brought within the limitation. * * * ...[733] The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorrence of government power to try people twice for the **same conduct** is one of the oldest ideas found in western civilization.' ***Bartkus v. Illinois***, 359 U.S. 121, 151-155, 79 S.Ct. 676, 3 L.Ed.2d 684 (Black, J., dissenting). And its purposes are several. **It prevents the State from using the criminal process as an instrument of harassment to wear the accused out** by a multitude of cases with accumulated trials. ***Abbate v. United States***, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72. ...The vice [735] of this procedure lies in relitagating the **same evidence** before two different juries with a man's innocence or guilt at stake. ...**Harrasment of an accused by successive prosecutions**...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches. ***Downum v. United States***, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...'**This case presents an instance of the prosecution being allowed to harrass the accused with repeated trials and convictions on the same evidence**, until it achieves its desired result...' ***Ciucci v. Illinois***, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...Manifestly it is not the danger of jeopardy of being a second time found guilty. It is the **punishment** that would legally follow the second conviction which is the real danger guarded against by the Constitution. ...It is doubtless true that the State has an interest in adjusting sentences upward [737] when it discovers new

evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See ***United States v. Tateo***, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" [see, Akers' Memorandum, pages 484-487, FN4, emphasis added]; **and**

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Menna v. New York, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty**" [*id.*, emphasis added];

Abney v. United States, 431 US 651, 97 SCt, 52 LEd(2d) 651 (1977), i.e., "Double jeopardy clause protects an individual against more than being subjected to double punishments; **it is a guarantee against being twice put to trial for the same offense**. U.S.C.A. Const. Amend. 5" [*id.*, emphasis added]; **and**

Fourteenth Amendment, United States Constitution [Akers' Memorandum at pages 10 & 11], i.e., "**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ...nor deny any person within its jurisdiction equal protection of the laws.**" [*id.*, emphasis added]

Further, it is immaterial whether that "same court decision affirmed the 1998 stalking conviction" [**see** Akers' "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02, at FN7, page 16 thereof, i.e., as follows:

> "Akers' conviction 'First-Degree Stalking' is **even more easily defeated**, i.e., (1) there were no charges whatsoever against Akers at the time he migrated back to Tennessee on September 23, 1994 [Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at

pages 565 & 566, ¶E-51 with FN63]; (2) thereafter, Akers did not voluntarily return **to <u>any</u> jurisdiction within Kentucky** and there is no allegation to the contrary [*id.* at pages 566 & 567, ¶¶E-54 with FN65]; (3) Akers never made **<u>even a single threat</u> of 'serious physical injury or death' to Bishop <u>or anyone else</u>** - only 'threats' of a civil law suit - **<u>while within the State of Tennessee</u>** [*id.* at pages 567-580, ¶¶ E-56 thru E-64 with FN66 thru FN69 thereto, FN72, & FN75]; (4) Akers' acts were lawful within the State of Tennessee [*id.*, pages 572-573, ¶E-60 with FN69 thereto]; (5) **Akers acts <u>were not cognizable</u> under Kentucky Law** [*id.*, pages 511-512, 'K.R.S. 500.060 Territorial applicability' with FN32 thereto; & (6) **<u>in essence</u>, Akers was convicted for violating a 'protective order' <u>with which he had not been served</u> and was <u>not even aware of</u>**, in **<u>clear</u> violation of the Fourteenth Amendment to the U.S. Constitution** [*id.*, page 574-575, ¶¶ E-65 & E-66 w/FN70 thereto]. **<u>Clearly</u>, there was no <u>actionable</u> 'criminal' basis for <u>any manner</u> of 'stalking'** charges against Akers and therefore, **<u>there could have been no jurisdiction</u>**." **<u>See also</u>**: ***U.S. v. Casciano***, 927 F.Supp. 54 N.D.N.Y. 1996, i.e., "11. ...**For purposes of crossing a state line** with intent **to engage in conduct in violation of protective order, if court issuing order has failed to obtain personal jurisdiction** over defendant by service of process, **then order was invalid and <u>prosecution cannot survive</u>**. 18 U.S.C.A. § 2262(A)(1); 12. Due process clause requires that notice be reasonably calculated, **under all circumstances**, to apprise interested parties of penalty of an action and afford them an opportunity to present their objections. **U.S.C.A. Const. Amend. 5**." (emphasis added); & "**<u>Due process of law" defined</u>** , *id.*, page 484].

(C) **<u>Not</u> "<u>all individuals</u> who testified against Akers** in the Fayette Circuit Court actions ...have been named as Defendants/Appellees" herein - **<u>only those who have violated the Federal Laws</u>** as detailed within Akers' Complaint and Memorandum. Bishop's brother (Wendell Patrick), sister-in-law

(Mildred Patrick), co-workers at Central Bank (Jeff Jacobs & Sheila Parks, etc.), and **even Bishop's own mentor** during the divorce (Jane Preston), even though adversarial to Akers,...

...attempted to be truthful – at least insofar as permitted by Defendants-Appellees Overstreet and Red Corn. Akers has no evidence that would indicate that any of these witnesses were, **in any way**, involved in those unlawful acts detailed within Akers Complaint and Memorandum.

Kentucky Assistant Attorney General D. Brent Irvin erroneously surmises:

> (a) "Evidently fearing that the federal judges in Kentucky would be familiar with his prior history of filing frivolous civil rights and habeas corpus cases, Akers tried his luck in a different court" [Irvin's "Appellees' Brief", D.E. of 01/09/03, pp 7, ¶ 2, lines 1-3];
>
> (b) "The thrust of Akers complaint is the same as before; that his former wife (**the crime victim**) Bishop..." [***id.***, page 7, ¶ 3, lines 1 & 2, emph. added]; &
>
> (c) "Although Akers admits striking his wife, Akers contends that the resulting domestic relations assault and stalking charges were a type of extortion designed to secure his former wife a greater share of the marital property. ...**He alleges his own divorce attorney and Bishop's divorce attorney engaged in "racketeering"** by performing legal services on behalf of their clients" [***id.***, page 8, lines 10-17, emph. added]

(A) Akers had no fear that "the federal judges in Kentucky would be familiar with his prior history of filing [allegedly] frivolous civil rights and habeas corpus cases". Nor did Akers resort to "tr[ying] his luck in a different court". Akers considers Irvin's allegation of "forum shopping" to be just as offensive – **if not just as libelous** – as Irvin's characterization of

Akers as a "wife beater". The simple truth is that: (1) if not for the fact that Akers had been essentially kidnaped from the State of Tennessee by Kentucky authorities and fraudulently imprisoned within Kentucky, this case would have been filed in United States District Court for the Middle District of Tennessee **long before May of 1999**. Irvin's argument only discloses his ignorance of the manner in which mail is forwarded and received by a Kentucky prisoner - **both being essential considerations** in the initiation and maintenance of **any** legal action.

(B) Irvin and many of his colleagues are obviously "hell bent" on characterizing **Bishop as the "victim" of Akers** - obviously because that premise invokes all **the "political" aspects** of "domestic violence" in lieu of the "legal" aspects - **a strategy which has worked wonders**...

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...**for them in the Kentucky Court of Appeals and U.S. District Courts**. Nevertheless, the facts of this case make it crystal clear that just the opposite is true, i.e.,

> "The defendants...allege **Bishop to be the 'victim' of Akers** [4] ...and propound their 'paraphrased' version of Judge Wilhoit's 'MEMORANDUM OPINION AND ORDER' in which they 'gloss over' Judge Wilhoit's findings that, in essence, Akers did 'not clearly set forth the jurisdictional basis' and that the Court was without jurisdiction until such time as Akers' convictions had been 'declared invalid'. Both deficiencies have subsequently been remedied [see Akers' Complaint (generally) and Akers Memorandum at ¶ 119, page 169, together with FN134]. Inasmuch as the Defendants Witt, Layne, and Vaughan assert essentially the same arguments in their motions and memorandums [Docket Entry #42 at ¶ 3; Docket Entry # 43 at [Argument] VII; & Docket Entry # 35 at ¶ B], Akers' 'response' is the

same." [see, e.g., Exhibit 02-6235-113 (Memorandum), Joint Appendix, page 692]

Defendants-Appellees Layne, Shannon, & Kelly fraudulently assert:

> "Akers based all claims on his disagreement with his convictions in Kentucky state court for stalking and assault" [Layne's & Shannon's "Brief for Appellees", D.E. of 01/13/2003, page 1, ¶4, lines 3 & 4. **See also**, Kelly's "Brief for Appellee", D.E. of 12/18/2002, Page 1, ¶4, lines 3 & 4].

The Constitution and Laws of the United States Constitution also "disagree" with Akers' said convictions and, more particularly, with the manner in which they were obtained, i.e., abuse of process, want of equal protection under the law, want of due process, lack of jurisdiction, fraud, and obstruction of justice, ***inter alia***.

ARGUMENTS

[See Akers' "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02]

---

[4] "It is a matter of opinion **who has been "victimized" by whom**. Ultimately, that issue may be one that only a **fair and impartial jury**, in a **fair and impartial courtroom setting**, and **presided over by a fair and impartial Judge** can decide and is, indeed, an issue inextricably intertwined with the relief Akers seeks in this civil action. **Perhaps Bishop has been "victimized"** in the matters raised in the Kentucky Courts. **The real question, however, is by whom** – by Akers, by herself, or by her co-defendants in this case? On the other hand, **there can be no question whatsoever whether Akers has been "victimized"** [see Akers' Complaint and Memorandum (generally)] **or by whom**." [see, e.g., "EXHIBIT 02-6235-13", Joint Appendix at pages 692-693, ¶2(D)(i) & (ii)].

CONCLUSION

The herein Defendants-Appellees jointly praise the District Court's "JUDGEMENT" and accompanying "MEMORANDUM OPINION AND ORDER, DISMISSING" as "thorough and well-reasoned" and, indeed, it was **thoroughly wrong**. Whether the same was "well-reasoned" depends upon whether one's objective is that of "substantial justice" or "obstruction of justice".

With all due consideration of the foregoing, there should be little wonder why it is that, in modern day America, so many innocent men are imprisoned – if not awaiting execution on "death row" – while the "guilty" remain free. America's criminal justice system is in dire need of a major overhaul, and the within case has proven to be as good to start with as any likely to be found.

This Honorable United States Court of Appeals for the Sixth Circuit is asked to do no more and no less than each of Its justices are sworn to do, i.e., to "preserve and protect the Constitution and Laws of the United States of America".

WHEREFORE, Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, again asks and prays of this Honorable Court to "**GRANT**" all the relief prayed for in his "AMENDED BRIEF FOR APPELLANT", entered herein on 12/17/02.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATION OF COMPLIANCE

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, hereby certifies that the foregoing "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT" fully complies with F.R.A.P. 32(a)(7)(B)(ii) inasmuch as, according to the "WORD PERFECT 9" program used, the said "FINAL REPLY BRIEF FOR PLAINTIFF- APPELLANT" contains **exactly** 30,151 characters; **5,580 words**; 210 sentences; **465 lines**; 75 paragraphs; & **15 pages** (**excluding** those items listed in 6 Cir. R. 28(b) and/or Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure).

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
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RENEWED REQUEST FOR ORAL ARGUMENTS

The Defendants-Appellees have filed "Briefs" herein which total 214-pages according to Court records. It would be all but impossible to address them all within the limitations imposed upon this "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT" by F.R.A.P. 32(a)(7)(B)(ii).

Akers believes that, within his "FINAL BRIEF FOR PLAINTIFF-APPELLANT" entered herein on 12/17/02 and hereinabove "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT", all significant issues presented by the District Court and Defendants-Appellees have been adequately addressed. Akers further believes that he has provided this Honorable Court with **compelling arguments** in support of remand.

If, however, the Court finds any remaining contentions of the District Court and/or any of the Defendants-Appellees to be conclusively meritorious, Akers must respectfully request that "oral arguments" be granted pursuant to F.R.A.P. 34(a)(2) **and** 6 Cir. R. 34(a), in order that his "due process rights" to be heard will be properly respected.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
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FINAL DESIGNATION OF APPENDIX CONTENTS

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654 **in conjunction with** 6 Cir. R. 28(d) and/or 6 Cir. R. 30(b), hereby files and serves as an addendum to the foregoing "FINAL BRIEF FOR APPELLANT" designation of the parts of the record included in the "Joint Appendix" as follows:

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s/ James G. Akers
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CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 28th day of February, 2003, served two (2) true copies of the foregoing "FINAL REPLY BRIEF FOR PLAINTIFF-APPELLANT" upon respective lead counsel for each and every named Defendant-Appellee, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings.**)

s/ James G. Akers
JAMES G. AKERS, ***Plaintiff-Appellant***
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

[END OF DOCUMENT]

Case Number: 02-6235

IN THE

United States Court of Appeals for the Sixth Circuit

JAMES G. AKERS,

Plaintiff-Appellant,

v.

CAROLYN P. BISHOP, *et al,*

Defendants-Appellees.

On Appeal from the United States District Court for the Eastern District of Kentucky-Lexington Division

FINAL BRIEF FOR PLAINTIFF-APPELLANT

This document was prepared by:
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(d) CBT Does 1 through 40 [known only as a group of "persons" at Central Bank & Trust Company, Inc., Lexington, Kentucky]; (h) SCC Does 1 through 50 [known only as that group of "persons" at Southland Christian Church of Lexington, Inc., Nicholasville, Kentucky]; (l) FCS Does 1 through 30 [known only as a group of "persons" at the Fayette County (Kentucky) Sheriff's Office, Lexington, Kentucky]; (p) CAO Does 1 through 20 [known only as that group of "persons" at the Commonwealth's Attorney's Office for Kentucky's Twenty-second Judicial District, Lexington, Kentucky]; & (q) FCC Does 1 through 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky] all as yet unidentified due to foreclosure of discovery by the District Court.

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[1] The Commonwealth of Kentucky **has not been named as a party hereto**.

STATEMENT OF JURISDICTION (GENERALLY)

The civil case from which the within action arises involves violations of Federal Law – some originating within Kentucky and resulting in violations within Tennessee and, conversely, some originating within Tennessee and resulting in violations within Kentucky. **Neither** the State **nor** Federal Courts within the states of Tennessee **or** Kentucky have **both** personal jurisdiction over all the parties **and** subject matter jurisdiction over all the issues. Therefore, the Federal Courts have exclusive jurisdiction pursuant to the specific provisions of TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)

STATEMENT OF JURISDICTION (U. S. DISTRICT COURT)

The United States District Court for the Middle Tennessee District-Nashville Division, had both jurisdiction and venue to hear and adjudicate the herein civil action, and to consider all matters with respect thereto, pursuant to the specific provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3), respectively.

The facts establishing venue for the case within the United States District for the Middle Tennessee District-Nashville Division include, **but are not limited to**, factual allegations that the herein Defendants-Appellees, while within the Commonwealth of Kentucky, committed the criminal acts of interstate extortion, interstate blackmail, interstate kidnaping and/or fraudulent extradition, further interstate extortion, further interstate blackmail, and interstate civil rights intimidation, all of which originated within Kentucky and resulted in the commission of those specific criminal acts against the Plaintiff-Appellant, James G. Akers, while said James G. Akers was a lawful resident of and, at all times relevant thereto, remained within the State of Tennessee. Those said "criminal

acts" and additional "overt acts" in the furtherance and concealment thereof are (1) as detailed...

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...within Akers' Complaint; (2) clearly rise to the level of R.I.C.O. violations and Civil Rights violations/conspiracies in clear and distinct violation of the provisions of Title 18 U.S.C. § 1964(c); Title 42 U.S.C. § 1983; and Title 42 U.S.C. § 1985(3), respectively; and (3) have resulted in those injuries to said James G. Akers in his person, property, and businesses, **all of which** are situated within the Federal District of Middle Tennessee, at Nashville.

STATEMENT OF JURISDICTION (U. S. COURT OF APPEALS)

United States Court of Appeals for the Sixth Circuit had jurisdiction to hear and adjudicate Akers' appeal docketed on October 16, 2001, as Case No. 01-6243 therein , and to consider all matters with respect thereto, pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure **in conjunction with** the "Collateral Order Doctrine" as set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) **and** **TITLE 28 U.S.C. § 1292(a)(1)**, but disclaimed Its jurisdiction pursuant to the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984), on January 24, 2002.

This United States Court of Appeals for the Sixth Circuit now, once again, has jurisdiction to hear and adjudicate Akers' appeal docketed as Case No. 02-6235 therein on October 17, 2002, and to consider all matters with respect thereto, pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure. **Additionally**, Akers has properly preserved the issue as to

whether this Honorable Court had jurisdiction with respect to Akers' previous appeal, docketed as Case No. 01-6243 herein on October 16, 2001, pursuant to the "Collateral Order Doctrine".

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STATEMENT PURSUANT TO F.R.A.P. 28(a)(4)(C) & (D)

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), **without counsel** in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" in United States District Court for the Middle Tennessee District-Nashville Division [Joint Appendix, Volume One, Exhibit 02-6235-02, page 15 thereof] together with Akers' contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" [*id.*, Volume Two, Exhibit 02-6235-11, page 195] and contemporaneous "APPENDIX/RELEVANT EXHIBITS" [Case No. 3:00cv1142, D.E. #3, Volumes 1 & 2] in support thereof (herein "Akers Complaint"; "Akers' Memorandum"; & "Akers' Appendix", respectively). Jurisdiction was asserted pursuant to the provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing acts" as alleged in Akers' Complaint had occurred within the Federal District of Middle Tennessee. "Diversity of citizenship" of the parties was, **at most**, a secondary consideration.

The factual allegations within Akers' Complaint, when coupled with those applicable Constitutional, Statutory, and Common Laws of the United States of America and "authorities" in support thereof as cited in Akers' Memorandum, will speak for themselves. **Not even a single Defendant has attempted to controvert even a single averment** and, in fact, **they can not do so without placing themselves in peril of yet further sanctions and/or penalties** under Federal Law. **The "merits" of Akers' herein case are not even disputable**.

On September 18, 2001, the Honorable Robert L. Echols,

Chief Judge, U. S. District for the Middle Tennessee District-Nashville Division, entered his "ORDER" and accompanying "MEMORANDUM" [Joint Appendix, Volume One, Exhibit 02-6235-03, page 149] **denying** the...

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...Defendants' various "Motion[s] to Dismiss" **but granting** transfer of the case to U.S. District Court, Eastern District of Kentucky.

It being apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) accepted the Defendants'-Appellees' fraudulent renditions of the facts with respect thereto; **or** (5) based Its ruling upon a combination of "all the above", Akers served and filed his **first** "Notice of Appeal" on September 21, 2001, and paid the requisite filing fees on that same date. The case was then docketed as Case No. 01-6243 in the Sixth Circuit Court of Appeals on October 16, 2001.

Notwithstanding "Motion(s) to Dismiss" the appeal for lack of jurisdiction to consider what they termed an "interlocutory appeal" as filed on behalf of Defendants-Appellees Jerry L. Kelly [Case No. 01-6243, D.E. of 10/24/01]; Carolyn P. Bishop [***id.***, D.E. of 10/31/01]; Pamela R. Goodwine, Todd D. Ferguson, Cindy G. Schwartz, Rebecca M. Overstreet, Lou A. Red Corn, and Thomas D. Clark [***id.***, D.E. of 11/13/01]; Katherine H. Witt [***id.***, D.E. of 10/07/01]; & Doris Fleming [***id.***, D.E. of 11/09/01]; and Akers timely "Responses and/or Objections" thereto [***id.***, D.E. of 11/01/01; D.E. of 11/09/01; D.E. of 11/13/01; D.E. of 11/28/01; & D.E. of 11/28/01, respectively], Akers timely served and filed his "Brief for Appellant" [see Joint Appendix, Volume Two, Exhibit 02-6235-11, page 335] on November 12, 2001, in which he argued that:

I - VENUE PROPERLY [RESTED] WITH UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT, AT NASHVILLE;

II - "ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY [WAS] "COLLATERAL TO MERITS" OF THE CASE;

III - TRANSFER OF [THE] CASE TO UNITED STATES DISTRICT COURT FOR [THE] EASTERN DISTRICT OF KENTUCKY [WOULD] RESULT IN IRREPARABLE DAMAGE TO AKERS;

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IV - ISSUES RESPECTING TRANSFER OF CASE TO THE EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, [WERE] "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"; &

V - THE "ENDS OF JUSTICE" REQUIRE[D] VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR THE MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION.

In support of his contentions, Akers cited: F.R.A.P. Rules 4 & 28(a); Title 28 U.S.C. § 1654; Title 28 U.S.C. § 1292(a)(1); Title 18 U.S.C. § 1964(c); Title 18 U.S.C. § 1965(b); Title 42 U.S.C. § 1983; Title 42 U.S.C. § 1985(3); Title 42 U.S.C. § 1988(a); ***Abney v. United States***, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977); ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980); ***Clemence v. Clemence***, 8 Kan.App.2d 377, 658 P.2d 368 (1983); ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); ***Collins v. Chandler Unified School Dist.***, C.A.9 (Ariz.) 1981, 644 F.2d 759; ***Cooper v. Molko, D.C.Cal.***, 512 FR.Supp. 563 (1981); ***Dennis v. Chang***, C.A.9 (Hawaii), 1980, 611 F.2d 1302; ***Donaldson v. O'Connor***, N.D.Fla. 1978, 454 F.Supp. 311; ***Firestone Tire & Rubber Co. v. Risjord***, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981); ***Johnson v. Summer***, N.D.Miss.1980, 488 F.Supp. 83; ***Jones v. Bales***, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972); & ***PT United Can Co. v.***

Crown Cork & Seal Co.,138 F.3d 65, 71-72 (2d Cir. 1998), ***inter alia***.

Applying the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984), on January 24, 2002, this Sixth Circuit Court of Appeals **rejected** Akers' arguments pursuant to the "Collateral Order Doctrine" as set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) and disclaimed Its jurisdiction to hear...

...and adjudicate Akers' then appeal, and to consider all matters with respect thereto, **notwithstanding the specific language set out within Title 28 U.S.C. § 1292(a)(1)**. [Case No. 01-6243, 01/24/02]. On February 13, 2002, Akers then filed his "Petition for Stay of Mandate" [Joint Appendix, Volume Two, Exhibit 02-6235-11, page 280] pending the filing and disposition of Akers planned "Petition for Writ of Certiorari" with the United States Supreme Court [***id.***, page 240] and that petition was, as well, rejected by this Court on February 21, 2001 [Case No. 01-6243, 02/21/02].

Pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in, e.g., **Cohen v. Beneficial Loan Corp.**, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949), in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until whole case is adjudicated", on April 24, 2002, Akers timely served and filed his "Petition for Writ of Certiorari" with the United States Supreme Court seeking reversal of this Honorable Court's

dismissal of Akers' appeal.

On June 24, 2002, Akers' said "Petition for Writ of Certiorari" was "**DENIED**" by the United States Supreme Court for no stated reasons and, then, on April 4, 2002, the case was re-docketed as Case No. 5:02cv0162 within United States District Court for the Eastern District of Kentucky-Lexington Division, and assigned to District Judge Jennifer B. Coffman.

Following a lengthy repetition of those same arguments in support of their respective "Motion(s) to Dismiss" and/or "Motion(s) to Stay Discovery" [Case No. 5:02cv0162, D.E. Nos. 2, 3, 6, 11, 14, 15, 19, 20, 23, & 40] and Akers' timely "Responses and/or Objections" and/or 'Motion(s) to Strike" with respect thereto [Case No. 5:02cv0162, D.E. Nos. 4, 5, 7, 14, (response to D.E. #11, not entered due to error by Clerk), 28, 29, 32, 33, & 43, respectively] as had been filed...

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...in United States District Court for the Middle District of Tennessee-Nashville Division [Case No. 3:00cv1142 therein], on September 25, 2002, United States District Judge Jennifer B. Coffman entered her "FINAL AND APPEALABLE" "JUDGEMENT" **dismissing, with prejudice, the entire action, including what she perceived to be any and all pendant state claims**, and accompanying contemporaneous "MEMORANDUM OPINION AND ORDER, DISMISSING" [Joint Appendix, Volume One, Exhibit 02-6235-04, page 157].[2]

As a matter of right, on October 3, 2002, Akers served and filed his "NOTICE OF APPEAL to UNITED STATES COURT OF APPEALS for the SIXTH CIRCUIT" [*id.*, Volume Two, Exhibit 02-6235-05, page 236] and payed the requisite "filing fees" and "docketing fees" therewith pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure.

Following complaints from the various opposing counsel that Akers' previous "BRIEF FOR APPELLANT" timely-filed on November 14, 2002, was in substantial non-compliance with Rules 28 and/or 32 of the Federal Rules of Appellate Procedure, on December 5, 2002, Akers then filed and served his

"AMENDED BRIEF FOR APPELLANT" and contemporaneous "MOTION FOR LEAVE TO FILE AMENDED BRIEF FOR APPELLANT PURSUANT TO 6 CIR. R. 27(a)" pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with previously-asserted arguments with respect to the "Collateral Order Doctrine" set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**.[3]

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[2] See particularly relevant excerpts therefrom as quoted within "ARGUMENT V", ***infra***, page 23 & 24 hereof.

[3] **See also**: **Firestone Tire & Rubber Co. v. Risjord**, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981), i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine."; & **Abney v. United States**, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977), Akers Memorandum at FN4, i.e., "Of course, Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings."

STATEMENT PURSUANT TO F.R.A.P. 28(a)(5)

[See 'TABLE OF CONTENTS", "Argument(s) I thru VIII", ***supra***, page (i) hereof]

STATEMENT PURSUANT TO F.R.A.P. 28(a)(6) & (7)

The following are edited excerpts[4] from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00cv1142] as filed on November 21, 2000, in United States District Court for the Middle Tennessee District-Nashville Division:

"On August 25, 1993, just two (2) months

preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as "Bishop"), the Plaintiff, James G. Akers (hereinafter 'Akers') was awarded a sizeable cash settlement on behalf of Coleman/Akers & Akers, Incorporated (hereinafter 'C/AA'), a Kentucky corporation owned and operated by Akers and based in the Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.

In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; 'Nazi' Germany; and 'cold war era' Soviet Bloc countries, Defendant Bishop and her hereinafter named co-conspirators devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights pursuant to, ***inter alia***, **Article I-§§ 9 & 10, Article III-§2, Article IV-§2,** and the **First, Fourth, Fifth, Sixth, Eighth, Thirteenth,** and **Fourteenth Amendments** of/to the **United** States **Constitution** and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants **have not been limited** to 'civil rights violations' under 'color of state law', 'color of office', and/or 'malicious prosecution' but extend, in fact, to **criminal acts** in blatant and direct violation of the Federal Laws as hereinafter enumerated.

As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) **assaulted, decoyed, inveigled, and robbed** in May and June of 1994 and, in the covert concealment thereof, was; (b) **unlawfully imprisoned** in May and July of 1994 and, in covert concealment thereof;

(c) **blackmailed and/or extorted** from July of 1994 thru March of 1995, and in further concealment thereof; (d) **essentially 'kidnapped' and fraudulently**...

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[4] Edited **for clerical errors only** and for formatting required for compliance with F.R.A.P. 32(a)(7)(C).

...**held** in Nashville, Tennessee, during August and September, 1995, and, in the covert concealment thereof; (e) **fraudulently extradited** back to Kentucky in October of 1995 and, in the **further concealment** of the hereinbefore schemes; (f) **fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned** in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, until April 15, 1998, when; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an 'Opinion and Order', as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

In the further concealment of those said schemes of/by the Defendants, and as an **intentional and continuing course of conduct** by them, Akers was: (a) **further blackmailed/ extorted** in March of 1998; was (b) **further** oppressively imprisoned in April of 1998; was (c) **further blackmailed and/or extorted** from April through October of 1998, and then; (d) **yet again, oppressively and unlawfully prosecuted, convicted, and then imprisoned** for the **very same unconstitutional and fraudulent felony charges**, pursuant to the **very same unconstitutional and fraudulent indictment**, as was the case in May of 1996.

Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its **second** "Opinion" on May 19, 2000, in

which It **reversed** (in part) Akers' convictions **for the second time** and ruling, in hereunto relevant part, as follows:

> '**It is clear** that the trial court failed to follow our instructions on remand;
>
> 'The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it **had not read our decision**';
>
> '**Without reading our decision, the court could not have followed our directives**';
>
> 'While our opinion did not specifically so require, **the trial court should have granted Akers separate trials** on each count';
>
> 'By not holding separate trials, **the trial court abused its discretion and denied Akers a fair trial**...';
>
> '**Fairness and justice require us to reverse his (Akers) conviction**...' (emphasis added)

Akers is not an attorney, and does not have any formal training or education in the Law. Having been forced to expend **vast resources** in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, further assistance and/or counsel of attorneys with respect to the matters set forth herein."[Joint Appendix, Volume One, Exhibit 02-6235-02, pages 16-19, emphasis added]

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As this Honorable Court can readily determine from the hereinabove, the within case is extensive. It involves at least sixteen (16) Defendants-Appellees named in only their individual private capacities as "persons" as defined within Title 18 U.S.C. §§2 & 1961(3), and Title 42 U.S.C. §§ 1983 & 1985; four (4) "enterprises" as defined within Title 18 U.S.C. § 1961(4), i.e.,

"Southland Christian Church of Lexington, Inc.", the "Association-in-fact", "Dr. John J. Vaughan, M.D.", & "Ernest W. Williams, Attorney-at-law"; and potentially two hundred ten (210) "Does" who have yet to be either quantified or identified due to foreclosure of discovery by the District Court. **The case does not, as the District Court alleges**, name "Central Bank & Trust Co., Lexington, Kentucky", "the Fayette County Circuit Court", or "the Fayette County, KY Sheriff's Office" as **either** "defendants" **or** "enterprises".

Summarily, the factual allegations against these Defendants-Appellees include, ***inter alia***, charges that, beginning in about mid-July, 1993, and continuing through July 7, 2000:

> (a) The named Defendants-Appellees engaged in various "conspiracies" and/or "chain conspiracies" in violation of TITLE 42 U.S.C. § 1985 [Joint Appendix, Volume One, Exhibit 02-6235-02, ***viz***, "COUNT ONE" through "COUNT FOUR", pages 110-113; "COUNT TWELVE", pages 118-119; & "COUNT TWENTY-THREE, pages 136-137] **and, in furtherance and concealment thereof**;
>
> (b) The named Defendants-Appellees committed numerous specific "overt acts" in violation of TITLE 42 U.S.C. § 1983 [***id.***, ***viz***, "COUNT[S] FIVE through ELEVEN", pages 113-118; "COUNT(S) THIRTEEN & FOURTEEN", pages 119-120; & "COUNT(S) TWENTY-TWO & TWENTY-THREE", pages 135-137] **and, in the course thereof**;
>
> (c) The named Defendants-Respondents committed numerous predicate acts in violation of TITLE 18 U.S.C. § 1961, ***et seq.***, as are **all** detailed within Akers' Complaint...

> ...and Memorandum in support [***id.***, ***viz***, "COUNT(S) FIFTEEN through TWENTY-ONE", pages 120-135 thereof, for enumerations].[5]

Notwithstanding the specific requirements set forth in F.R.C.P. 12((a)(4)(A), only a single Defendant-Appellee, Carolyn P. Bishop, has filed what could **even conceivably be considered an "Answer" to Akers' Complaint** following the denial of their respective and clearly frivolous "MOTION(S) TO DISMISS" as filed in either United States District Court for the Middle District of Tennessee-Nashville Division [Case No. 3:00cv1142] **and as renewed** in United States District Court for the Eastern District of Kentucky-Lexington Division [Case No. 5:02cv0162 therein]. Moreover, except for Defendant Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see USDC-MTD Case No. 3:00cv1142, D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7];[6] Defendant Kelly's denial that he has had any contact with Akers since September 23, 1994 [*id.*, D.E. #76, page 2, lines 8 & 9];[6] & Defendant Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record" [USDC-KYED Case No. 5:02cv0162, D.E. #2 at ¶3],[6] **not even a single** Defendant-

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[5] If the Court would be so inclined, Akers would respectfully ask that It review those specific averments giving rise to these summary allegations as contained within ¶¶12 through 127 of Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" in United States District Court for the Middle Tennessee District-Nashville Division [Joint Appendix, Volume One, pages 34-109] together with parallel ¶¶12 thru 127 and all footnotes thereto, respectively, of Akers' therewith and contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" [*id.*, Volume Two, Exhibit 02-6235-11, page 195].

[6] Even so, the remaining factual allegations are clearly sufficient to sustain a "Summary Judgement" against these Defendants-Appellees – **notwithstanding the fraudulent misrepresentations contained within their said pleadings**. [see USDC-TNMD Case No. 3:00cv1142, D.E. #68, D.E. #69, & D.E. #78, respectively]. Moreover, Defendant Carolyn P. Bishop has essentially admitted having committed the predicate acts of "theft by unlawful taking or disposition (over $300.00)" & "tampering with physical evidence", both being felonies under Kentucky Law and, therefore, violations of Title 18 U.S.C. § 1964(c); Defendant Jerry L. Kelly has essentially admitted having committed the predicate act of "forgery in the second degree", a felony under Kentucky Law and, therefore, a violation of Title 18 U.S.C. § 1964(c) if coupled with an additional such "predicate act"; and Defendants Pamela Miller & Katherine Witt have essentially admitted the fundamental elements of

"conspiracy", in violation of Title 42 U.S.C. § 1985(2) & (3). [See Akers' allegations with respect thereto within Akers' Complaint, Joint Appendix, Exhibit 02-0635-02, ¶¶ 142(c) & (d), 144(a), & 128, respectively]

Appellee has attempted to controvert **even a single averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Appellees **cannot deny the factual allegations against them** without subjecting themselves to still further sanctions and/or penalties under Federal Law. **The merits of Akers's herein case just, simply, can not be challenged**.

Notwithstanding the hereinabove, however, on September 25, 2002, District Judge Jennifer B. Coffman, Eastern District of Kentucky-Lexington, entered her "**JUDGEMENT**" **dismissing** Akers' Complaint - **in its entirety** - with respect to **every conceivable defendant and every conceivable** "**enterprise**" - **in every conceivable jurisdiction** - "**with prejudice**", and accompanied by her contemporaneous **thirty-four (34) page "MEMORANDUM OPINION AND ORDER, DISMISSING"** in which she cites **eighty-five (85) purported "authorities" in support of her ruling**.

Again, as a matter of right, this appeal follows that "**JUDGEMENT**" and accompanying **"MEMORANDUM OPINION AND ORDER, DISMISSING"** pursuant to F.R.A.P. Rules 4 & 28(a) **together with** Akers previous arguments pursuant to the "Collateral Order Doctrine" **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were **collateral to the merits**; (2) if **denial of an immediate appeal would result in irreparable damage to the party seeking review**; and (3) if the issue raised was "**too important**" to "**be deferred until the whole case is adjudicated**" (emphasis added). *Accord*, **Firestone Tire & Rubber Co. v. Risjord**, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981).

ARGUMENTS

ARGUMENT I: THE "ENDS OF JUSTICE" REQUIRE RE-TRANSFER OF VENUE BACK TO UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION

This Honorable Court is hereby asked to take judicial notice of the entire contents of Akers' "ARGUMENT(S) I, III, & V", Akers' "FINAL BRIEF FOR APPELLANT" [see Joint Appendix, Volume Two, pages 370-378]; appended "EXHIBIT CA6-10" to Akers' "PETITION FOR STAY OF MANDATE" entered this Court on February 13, 2001 (Case No. 02-6243 herein); and as contained within Akers' "Petition for Writ of Certiorari" entered with the United States Supreme Court on April 24, 2002. In essence, Akers' arguments therein include, **but are not limited to**, contentions that:

> The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period

encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents of, and maintain offices in, Middle Tennessee. Akers just, simply, no longer has the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S. District Court for the Eastern District of Kentucky at Lexington and **there are no expert witnesses** within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness conceivably required by the herein Defendants-Appellees have already testified with respect to every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts. All such testimony is mechanically-recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

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This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand: (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration within Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Appellees for filings, depositions, pre-trial hearings, and, ultimately, for trial; (b) The Defendants-Appellees,

realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118, Akers' Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [reference omitted]; (c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for "God only knows" how long; (d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; & (e) The Defendants-Appellees escape liability and exposure of corruption.

The herein Defendants-Appellees have committed equally-dastardly acts in May through July of 1994; October through December of 1995; and May of 1994 through July of 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward – thereby avoiding exposure of the corruption within their ranks.

Truly, **the "ends of justice" require** venue for Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee at Nashville.

"The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, ***et seq.***, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18]"

Yet further, while Akers was reluctant to suggest it at the time, it is clear from the District Court's "**JUDGEMENT**" and accompanying "**MEMORANDUM OPINION AND ORDER, DISMISSING**" as entered on September 25, 2002, by District Judge Jennifer B. Coffman, Eastern District of Kentucky-Lexington Division, that **it will be virtually impossible** for Akers to receive a **fair adjudication** of the within case **in any Court situated in Central Kentucky** and, perhaps, **even in the entire Commonwealth of Kentucky**.

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ARGUMENT II: **DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ABUSED ITS DISCRETION BY DENYING AKERS' "DEMAND FOR JUDGEMENT BY DEFAULT" & "MOTION FOR PARTIAL SUMMARY JUDGEMENT"**

"Notwithstanding the specific requirements set forth in F.R.C.P. 12((a) (4)(A), only a single Defendant-Respondent, Carolyn P. Bishop, has filed what could **even conceivably** be considered an "Answer" to Akers' Complaint following denial of their respective and clearly frivolous "MOTION(S) TO DISMISS" as filed in United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [Civil Action No. 3:00cv1142].

...**not even a single Defendant-Respondent** has attempted to controvert **even a single averment** as contained within Akers' 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)' inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes. The Defendants-Respondents **cannot deny the factualallegations against them** without subjecting themselves to still further sanctions and/or penalties under Federal Law **and** providing both Akers and the Federal Courts more than sufficient

admissions to both enter and sustain a 'JUDGEMENT ON THE PLEADINGS'.

3. Inasmuch as the Defendants-Respondents **have not presented, nor can they present, any meritorious defenses, whatsoever, to Akers' herein claims**, it is in the best interest of the American public-at-large and judicial economy would best be served if Akers' herein 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)'...is now and forthwith lawfully concluded without further exhaustive litigation at the taxpayers' expense. **There is no just cause for further delay** of the redress Akers seeks herein pursuant to TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3) in conjunction with the First Amendment to the United States Constitution, and no further 'Memorandum of Law' is either warranted or necessary." [Exhibit 02-6235-15, ¶¶2 & 3, Joint Appendix, pages 747-748]

Clearly, Akers was entitled to "Judgement by Default" against Defendants Doris Fleming, Allen I. Rushing, John J. Vaughan, Pamela Miller, and Ernest W. Williams pursuant to F.R.C.P. 12(a)(1)(A), F.R.C.P. 54(c), together with F.R.C.P. 55(a) & (b)(2); **and** "Partial Summary Judgement" against the remaining identified Defendants Todd M. Layne, Donald Shannon, Jerry L. Kelly, Thomas L. Clark, Katherine H. Witt, Lou A. Red Corn, Rebecca M. Overstreet, Cindy G. Schwartz, Todd D. Ferguson, & Pamela R. Goodwine pursuant to F.R.C.P. 8(b) & (d), F.R.C.P. 52(c), together with F.R.C.P. 56(a) & (d).

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ARGUMENT III: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ERRED BY APPLYING *HECK V. HUMPHREY* AND *ROOKER-FELDMAN* DOCTRINE AS GROUNDS FOR DISMISSAL OF ENTIRE CASE FOR "FAILURE TO STATE A CLAIM"

This Honorable Court is hereby asked to take judicial

notice of the entire contents of ¶2(D)(i) of Akers' "RESPONSES & OBJECTIONS TO: 'RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS'", filed as D.E. #43, Case No. 5:02cv0162, United States District Court for the Eastern District of Kentucky, at Lexington, on October 4, 2002 [Exhibit 02-6235-22, Joint Appendix, pages 850-854].

Additionally, Akers would point out that, with respect to ***District of Columbia Court of Appeals v. Feldman***, 460 U.S. 462, 476 (1983) and ***Rooker v. Fidelity Trust Co.***, 263 U.S. 413 (1923), **both of those cases are obviously inapplicable to the instant case**[7] inasmuch they...

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[7] The underlying "criminal" cases originate from a series of events leading to what, **at its worst**, could be legally construed as nothing more than a misdemeanor "assault under extreme emotional disturbance" [see. e.g., Case No. 5:02cv0162, D.E. #29, ¶ 7(b) & FN7 thereto, i.e., "**Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of 'assault' of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see 'OFFENSE, PENALTY AND BAIL SCHEDULE', APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional '***ex post facto***' **enhancement** under the disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/enhanced 'Domestic Violence & Abuse' laws and, **only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2).**" [see also, e.g., Akers' "Motion for Reconsideration", as filed in this Court [Case No. 01-o6243] on December 10, 2001, FN8, page 12 thereof]. Moreover, **there can be absolutely no question** that Akers had been **- at least twice - already fully-punished** for the events of May 4th and/or 5th, 1994 [see, e.g., Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at pages 538-593, ¶¶ E-34 w/FN44 thereto, E-37, E-38 w/FN49 thru FN53 thereto, E-51 w/FN81 thereto, & 81 w/FN76 thru FN82 thereto]. Not even considering the elements of malice, abuse of process, and fraud, ***inter alia***, Akers' convictions for **any charge** related to May 4th/5th, 1994, **was barred** by either the statute of limitations **and/or** the Fifth Amendment to the U.S. Constitution. Akers' conviction "First-Degree Stalking" is **even more easily defeated**, i.e., (1) there were no charges against Akers at the time he migrated back to Tennessee on September 23, 1994 [***id.***, ¶ E-51 w/FN63 thereto]; (2) thereafter, Akers did not voluntarily return **to any jurisdiction within Kentucky** and there is no allegation to the contrary [***id.***, ¶ E-54 w/FN64 & FN65 thereto]; (3) Akers never made **even a single threat of "serious physical injury or death" to Bishop or anyone else** - only "threats" of a civil law suit **- while within the State of Tennessee** [***id.***, ¶¶ E-56 thru E-64 w/FN66 thru FN69 thereto, FN72, & FN75]; (4) Akers' acts were lawful within the State of Tennessee [***id.***, ¶ E-60 w/FN69 thereto]; (5) **Akers acts were not cognizable under Kentucky Law** [see: K.R.S. 500.060 Territorial applicability", ***id.***, page

31, w/FN65 thereto]; & (6) **in essence**, Akers was convicted for violating a "protective order" **with which he had not been served and was not even aware of**, in **blatant violation of the Fourteenth Amendment to the U.S. Constitution** [*id.*, ¶¶ E-65 & E-66 w/FN70 thereto]. **Clearly, there were no actionable "criminal" bases for any manner of "assault" or "stalking"** charges against Akers and therefore, **there could have been no jurisdiction**.

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...address legal actions for which the trial court **clearly had both "personal" and "subject matter" jurisdiction**. The same is true with respect to *United States v. Owens*, 54 F 3d. 271, 274 (5th Cir. 1995); *Gottifried v. Medical Planning Services., Inc.*,142 f. 3d. 326, 330 (6th Cir.), cert denied, 525 U.S. 1041 (1998); *Migra v. Warren City School District Bd. of Ed.*, 465 U.S. 75, 85 (1984); *Rowe v. Bank One, Indianapolis NA*, 230 F.3d 1359, 2000 WL 1477231 (6th Cir., Sept. 25, 2000); & *Ritter v. Ross*, 992 F.2d 750 (7th Cir. 1993), cert. denied 510 U.S. 1046 (1994); 1008 (9th Cir. 2000); & *Bartell v. Lohiser*, 215 F.2d 550, 559 (6th Cir. 2000). Moreover, *Rowe v. Bank One, Indianapolis, NA*, **and** *Gottifried v. Medical Planning Services, Inc.* were rendered **after** most of the acts giving rise to Akers' herein claims **were completed**. **Neither of those cases**, whether supportive of Akers' case or supportive of any alleged "defenses", **can either set or affirm a precedent** with respect to the instant case inasmuch as to do so would be in distinct violation of Article 1- § 10 [Cl. 1] of the United States Constitution, i.e, as follows:

> "**No state shall...pass any...*ex post facto* law**,[8] or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added)

It would stand to reason, then, that if a state is prohibited from making or enforcing any ***ex post facto*** law, that the Courts of the United States are equally-prohibited from implementing or enforcing any ***ex post facto*** common law. Further, although it would seem superfluous to address this issue any further, a perfect example of such a fundamental miscarriage of justice is presented within this very case, i.e., the indictment which led to

Akers' "criminal convictions" which underlie...

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[8] The term "***ex post facto***" is defined as: "[For L.L. *ex post facto*, 'from what is done afterward.] Formulated after the fact; **adding to or in some way altering previous requisites, thereby changing a previously determined situation. After the fact**. - *ex post facto* law, a law made after an offense but operative with respect to it." [Grolier WEBSTER INTERNATIONAL DICTIONARY, Copyright 1974] **See also**: "***ex post facto law***" defined: "A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed." "...**every law** which, in relation to the offense or consequences, alters the situation of a person to his disadvantage. Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, 6th Edition-1998 (emphasis added)]

...the bases for claims herein reads as follows:

> COUNT 1:
>
> On or about the 4th day of May, 1994, in Fayette County, Kentucky, the above named defendant assaulted Carolyn Patrick Akers **with his hands** causing **serious physical injury**;
>
> COUNT 2:
>
> From November 1994 until August 1995, in Fayette County, Kentucky, the above named defendant committed stalking in the first degree by **intentionally stalking Carolyn Patrick Akers when he contacted her for no legitimate purpose, made explicit or implicit threats of serious physical injury or death while said James G. Akers was under a Domestic Violence Order** to have no contact with Carolyn Patrick Akers. [Akers' Memorandum, Exhibit 02-6235-11, Joint Appendix at pages 588-591, emphasis added]

The resulting "True Bill", issued November 6, 1995, charged Akers with:

> "COUNT 1: ASSAULT FIRST DEGREE KRS 508.010; UOR 13013 CLASS B FELONY"; and "COUNT 2: STALKING FIRST DEGREE KRS 508.140; UOR 13242 CLASS D FELONY". [*id.*, pages 592-593]

Up to and including May 4, 1994, when Akers supposedly "assaulted" his wife (then Carolyn P. Akers), the standard of proof required for a "First Degree Assault" had been firmly-established by the Kentucky cases of:

> ***Wills v Commonwealth***, 502 SW(2d) 60 (Ky 1973), i.e., : "Notwithstanding claim that instruction of malicious striking and wounding with intent to kill should not have been given because it was not proven that defendant had used a deadly weapon, **other than his fist which has been held not to be a deadly weapon**, where defendant was not convicted upon charge of striking and wounding but upon lesser charge of assault and battery, instruction was not prejudicial to defendant" (emphasis added);
>
> ***Charles v Commonwealth***, 321 SW(2d) 253 (Ky 1959), i.e., "**The fist has been held not to be a deadly weapon**" (emphasis added);
>
> ***Reed v Commonwealth***, 248 SW(2d) 911 (Ky 1952), i.e., "**Hands and feet are not deadly weapons**. (Annotation from former KRS 435.170)" (emphasis added); &
>
> ***Roney v Commonwealth***, 695 SW(2d) 863 (Ky 1985), i.e., "**A human fist is not a 'dangerous instrument' within the meaning of first-degree assault statute, KRS 508.010**; in light of the ambiguity of the legislature's intent, rule of lenity is followed and it was error to instruct the jury to convict an accused if it believed fists were dangerous instruments." (emphasis added) [*id.*, FN36, page 34]

In 1996, however, nearly **two (2) years after the so-called "assault"**, the Kentucky Court of Appeals rendered Its decision in ***Johnson v. Commonwealth***, 926 SW(2d) 463 (Ky. App. 1996), "overruling" the previous precedent set in ***Wills***, ***Charles***, ***Reed***, and ***Roney***. Thus, the herein Defendants not only **fraudulently convicted** Akers of "First Degree Assault", but they did so **utilizing standards** which had been **unconstitutionally altered**, ***ex post facto***. Likewise, the application of **either** *Hermansen v. Chandler; Smith-Hunter v. Harvey; Ruff v. Runyon; Harvey v. Waldron;* **or** *Bartell v. Lohiser* to the instant case would be **essentially the same**, i.e., **unconstitutionally *ex post facto*** in violation of Article 1- § 10 [Cl. 1] of the U. S. Constitution.

ARGUMENT IV: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ERRED BY APPLYING VARIOUS IMMUNITIES AS GROUNDS FOR DISMISSAL OF THE ENTIRE CASE

This Honorable Court is hereby asked to take judicial notice of the entire contents of ¶ 3(f), "MOTION TO STRIKE: DEFENDANT PAMELA MILLER'S 'RE-NOTICE & RENEWAL OF MOTION TO DISMISS', 'MOTION TO STAY DISCOVERY', & 'MOTION TO SUSPEND TIME TO ANSWER COMPLAINT' [Exhibit 02-6235-19, Joint Appendix at pages 803-805].

Obviously, the District Court completely misconstrued the facts of the case – or, at least, the timing with respect to those facts in that It has concluded that each and every one of the named Defendants is shielded from civil liability by either "judicial", "prosecutorial/quasi-judicial", and/or "witness" immunities and, thus, accepts the Defendants' ridiculous propositions that, e.g.,

> (i) By virtue of successful implementation and subsequent unlawful validation of **1993 conspiracies** in violation Title 42 U.S.C. § 1985, Defendants Miller, Witt,

and "LFG Does 1 through 50" have somehow gained some sort of "immunities" [see "COUNT ONE", Akers' Complaint, Exhibit 02-6235-02, Joint Appendix, "COUNT ONE", page 110];

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(ii) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Rushing, CBT Does 1 thru 40, Layne, Shannon, Vaughan, and Kelly acquired immunities for their **1994 conspiracies** in violation Title 42 U.S.C. § 1983 [***id.***, "COUNT(S) TWO thru FOUR", pages 111-113];

(iii) Defendants Bishop, Fleming, Rushing, Layne, Shannon, Kelly, SCC Does 1 thru 50, Witt, FCC Does 1 thru 30, Clark, and LFG Does 1 thru 60 have **all acquired immunities** for their **1994 "unlawful imprisonment"** of Akers [***id.***, "COUNT(S) FIVE, SIX, & SEVEN", pages 113-115] by virtue of fraudulent testimony of Bishop, Fleming, Rushing, Layne, and Shannon during fraudulent criminal trials of Akers in 1996 and 1998;

(iv) By virtue of their fraudulent testimony during fraudulent criminal trials of Akers in 1996 and 1998, Defendants Bishop, Fleming, Layne, Kelly, Rushing somehow acquired immunities for their **1994 predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "kidnaping", "unlawful imprisonment", "theft by unlawful taking (over $300.00)", "tampering with physical evidence", "wire fraud", "mail fraud", felonious "forgery", "theft by extortion", "blackmail", and "extortion" [***id.***, "COUNT(S) FIFTEEN (a) thru (d), pages 120-124; SIXTEEN (a), pages 124-125; & EIGHTEEN (a), pages 127-128, respectively];

(v) By virtue of their fraudulent criminal convictions of Akers in 1996 and 1998, Defendants Red Corn and Overstreet acquired immunities for their **1995**

> **predicate acts** in violation of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, "tampering with a witness" and "influencing a jury" [***id.***, "COUNT(S) NINETEEN (a) through (c), pages 128-131; & TWENTY (a), pages 131-133; & EIGHTEEN (a), pages 127-128, respectively]; &
>
> (vi) Notwithstanding that such acts **could not, by any stretch of imagination**, be considered "judicial", "quasi-judicial", **or in any other manner lawful**, the Defendants Red...
>
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> ...Corn, Overstreet, and Williams have immunities for their **1998 predicate acts** in violations of Title 18 U.S.C. § 1961, ***et seq.***, ***viz***, interstate "blackmail", interstate "extortion", and "civil rights intimidation" [***id.***, "COUNT TWENTY-ONE (a) thru (c), pages 133-135].

First, it is crucial to recognize that the history of "judicial immunities", "prosecutorial/ quasi-judicial immunities", and "witness immunities" is demonstrative of the underlying purpose and intent of ensuring "good faith" within the legal process. In the instant case, however, the Defendants-Appellees have **intentionally misused and abused** the common law principles of "judicial immunities", "prosecutorial/quasi-judicial immunities", "witness immunities", and all other "absolute and/or qualified immunities" as illicit amendments to the United States Constitution and applied them for the self-serving, self-protecting, and self-perpetuating purposes of concealing **their own criminal acts**.[9] Rather than effect the intended purpose of "good faith", they have been nothing more than licenses for these Defendants to "do as they well please" to perpetuate their individual and/or collective agendas - **with total and complete impunity and absolutely no accountability**.

Secondly, there are no constitutional, legislative, or statutory bases for such immunities - especially when, as in the instant case, they are clearly at odds with specific provisions of the Constitution and duly-enacted Laws of the United States of

America. Although it is clear that the Federal Courts have authority to implement policies with respect to the **due administration of justice, they do not have authority to sanction and/or pardon criminal acts** or, indeed, **any other act** in clear and distinct violation of the Constitution and Laws of the United States of...

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[9] Moreover, insofar as Akers has been able to ascertain, those herein Defendants-Appellees who are long-time members and/or officers of Southland Christian Church of Lexington, Inc., include , **but are not necessarily limited to**: Carolyn P. Bishop, Todd M. Layne, Donald R. Shannon, Jerry L. Kelly, Katherine H. Witt, and Rebecca M. Overstreet.

America. **Not even the Chief Justice of the United States Supreme Court is lawfully immune to criminal or civil penalties** for such unlawful acts, **whether intrinsically or extraneously** associated with public office [see. e.g. ***McMillan v. Svetanoff***, 793 F.2d 149 (5th Cir. 1986), i.e.,

> "Immunity is only granted when essential to protect the integrity of the judicial process"; "When the initiative and independence of the judiciary is not effectively impaired, the doctrine of judicial immunity does not apply"; "Judicial immunity should not be extended lightly or only because the actor is a judge. Before a judge is granted immunity, courts should examine the acts complained of to determine whether they are 'judicial'. If the acts do not involve the judicial process so that a fear exists that freedom of judicial decision-making may be stifled, the judge should not be free from suit"; & ("OUTCOME: The court affirmed the decision of the district court, which denied appellant judge's motion for summary judgment").
>
> **See also**: ***Cleavinger v. Saxner***, 474 U.S. 193, 106 S. Ct. 496, 501, 88 L. Ed. 2d 507 (1985) (citing favorably Saxner v. Benson, 727 F.2d at 669, 674 n.2 (Cudahy, J., concurring)), i.e., "We must be equally hesitant in

applying the doctrine to judges acting outside the traditional dispute resolution function"; ***Doe v. County of Lake, Indiana, et al,*** 399 F. Supp. 553, i.e., "Despite its fundamental and efficacious purpose, the doctrine of judicial immunity is not absolute and unlimited; it does not immunize every state court judge in every lawsuit. On the contrary, application of the doctrine is restricted to its single objective: to protect judicial freedom in the delicate process of deciding civil and criminal matters on their merits. Where the initiative and independence of the judiciary will not be effectively impaired, courts have refused to apply the doctrine [**6] of judicial immunity. For example, there is no official immunity from criminal liability. ***O'Shea v. Littleton,*** 414 U.S. 488, 503, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974). The Supreme Court recognized long ago that a state court judge can be made to answer criminally for violating the criminal provisions of the Civil Rights Act. ***Ex parte Virginia,*** 100 U.S. 339, 25 L. Ed. 676 (1879). In addition, federal courts have held that application of the doctrine is restricted to the following areas: 1. immunity applies only when judges are faced with suits involving their judicial as opposed to ministerial or administrative duties, and 2. immunity applies only when officials are sued for damages"; **and**

Eades v. Sterlinske, 810 F.2d 723 (7th Cir. 1986), i.e, "Judicial immunity is a creature solely of the common law. However, Congress did not abrogate the defense in enacting §§1 of the Civil Rights Act of 1871, 42 U.S.C.S. §§ 1983."]

Clearly, violators of Title 18 U.S.C. § 1961, ***et seq.***; Title 42 U.S.C. § 1983; and Title 42 U.S.C. § 1985 can not be permitted to escape liabilities by subsequently initiating **fraudulent criminal charges against their victim** and then fraudulently convicting him or testifying at his resulting trial.

ARGUMENT V: **DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ERRED BY ITS APPLICATION OF DOCTRINES OF "COLLATERAL ESTOPPEL"/ *RES JUDICATA* AS GROUNDS FOR DISMISSAL OF ENTIRE CASE FOR "FAILURE TO STATE A CLAIM"**

This Honorable Court is hereby asked to take judicial notice of the entire contents of ¶2(F)(i)/(ii), Exhibit 02-6235-19, Joint Appendix at pages 803-805; **and** ¶2(C)(ii), Exhibit 02-6235-22, Joint Appendix at pages 844-845.

Additionally, although the District Court does not specifically use the terms "***res judicata***" or "collateral estoppel", It has **obviously misapplied** those doctrines in Its "DISCUSSION V.1 - Preclusive Effect of 1999 Civil Rights Order" [Exhibit 02-6235-05, Joint Appendix at pages 182-183] and preludes thereto entitled "PRIOR LITIGATION IN THIS COURT - 1999 Civil Rights Action" & "1999 HABEAS CORPUS PETITION" [*id.*, pages 162-163], i.e., as follows:

> "The court takes judicial notice of the typed fourteen-page complaint Akers filed *pro se* in this court on May 10, 1999, being Civil Action 99-183 ('the 1999 civil rights action')"; & "The facts span the period between May 1994 and October 1998, and are summarized in this court's May 19, 1999 Memorandum Opinion and Order ('the 1999 Civil Rights Order'), **and are adopted and incorporated herein by reference**." [*id.*, page 3];
>
> "The petition again reiterated all of the events concerning Akers and Bishop's marital discord and Akers's subsequent criminal prosecutions in the Fayette District and Circuit Courts between May, 1994, and June 1999. Akers sought an order from this court releasing him from state custody on bond during the pendency of his appeal of the 1998 assault and stalking convictions, which appeal was then pending in the Kentucky Court

of Appeals. On February 2, 2000, this court entered a judgement dismissing Akers' habeas corpus petition. Akers did not appeal this court's dismissal of the 1999 habeas proceeding." [*id.*, page 4]; &

"The 1999 civil rights action stemmed from essentially the same set of facts and occurrences through and including May 10, 1999) which form the basis of the instant complaint. As discussed, the instant complaint does contain some, but not many, facts alleged to have occurred subsequent to May 10, 1999. While Akers has not proceeded in the instant case *in forma pauperis* (IFP), case law governing IFP proceedings (which usually also involve *pro se* plaintiffs) is persuasive. Courts may appropriately dismiss IFP actions as frivolous when the action 'seek[s] to relitigate claims which allege substantially the same facts arising from a common series of events which have already been unsuccessfully litigated by the IFP plaintiff.' Wilson v. Lynaugh, 878 F.2d846, 850 (5th Cir. 1989); see also Curtis v. Boggs, 2001 WL 649735 (N.D. Tex.); Robertson v. Burger King Corp., 1994 WL 424431 (E.D.La).

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Under Wilson, this court deems it appropriate to dismiss the instant action against Bishop, Overstreet, Swartz, Red Corn and Clark as frivolous. The present claims against these defendants are essentially repetitive of the claims Akers asserted in the 1999 civil rights action. Akers alleges 'substantially the same facts that arise from a common series of event that were unsuccessfully litigated by Plaintiff in [1999].' Curtis v. Boggs at **2. Thus, dismissal of Akers' complaint against these defendants is appropriate on these grounds." [*id.*, pages 23 - 24 thereof]

Akers also hastens to counter that **there are countless Federal Cases – including the very ones the District Court cites**

- which make it abundantly clear that prior invalidation of state court convictions **is <u>not</u> a pre-requisite** to a Title 42 U.S.C. § 1983 action when those convictions were obtained, as in the instant case, without jurisdiction [***Rooker v. Fidelity Trust Co., et al***, HN228]; or by either "abuse of process" or "some type of fraud" [***Heck v. Humphrey***, HN11 & FN3].

Moreover, if the District Court had simply taken the time to review the state court records or, more appropriately, permitted a fair and impartial jury to do so, It would almost certainly have recognized from the audiotapes and videotapes incorporated herein by reference that this case **<u>has</u> <u>never been</u> "litigated"** but, rather, **<u>perpetrated</u> - <u>twice</u>**. There is a significant difference between the two concepts. Akers is not "attempting to re-litigate" his two (2) criminal trials within the Fayette [Kentucky] Circuit Court inasmuch as "**the damage has already been done**" to Akers' person, property, and businesses. **<u>In the instant case</u>**, Akers is only attempting to obtain proper redress as specifically provided by Title18 U.S.C. § 1964(c), Title 42 U.S.C. §§ 1983 & 1985(3), and the First Amendment to the United States Constitution. Akers clearly understands that any "injunctive relief" must properly be sought within the Kentucky Court of Appeals, Kentucky Supreme Court, and/or the United States Supreme Court.

It is also crucial to recognize the chronology of the instant case - especially with respect to the timing of Akers' two (2) "criminal" cases and any subsequent actions seeking injunctive relief, i.e., (a) Akers was released from the custody of Kentucky authorities on July 11, 2000; ...

...(b) Akers herein claims pursuant to Title 42 U.S.C. §§ 1983 & 1985(3) **would have been <u>barred</u> by applicable statutes of limitations** after November 28, 2000; and (c) many of Akers herein claims pursuant to Title18 U.S.C. § 1964(c) were approaching similar deadlines. A motion pursuant to R.Cr. 11.42 is not time barred until July 7, 2003, and insofar as Akers can determine, there is no time limitation on the remedy Akers

will likely employ to have his criminal convictions either set aside or otherwise declared invalid, i.e., a "Petition for Writ of Prohibition". Thus, first, it would have been virtually impossible for Akers to complete either of those forms of relief prior to the approaching deadlines and, secondly, any such action would have invoked *Younger's* Abstention Doctrine and the Defendants would have prevailed on that basis.

Moreover, **Akers <u>clearly</u> needs evidence from the instant case to <u>support</u>** his motion pursuant to R.Cr. 11.42 and/or "Petition for Writ of Prohibition" in the Kentucky Court of Appeals, Kentucky Supreme Court, and/or United States Supreme Court. Without such evidence, how could either of those Courts render an informed decision with respect thereto?

<u>ARGUMENT VI</u>: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, LEXINGTON, ABUSED ITS DISCRETION BY REFUSING TO PROPERLY APPLY REQUIRED "STANDARD OF REVIEW" WITH RESPECT TO DEFENDANTS' "MOTION[S] TO DISMISS"

In support of Its decision, the District Court cites the cases of *Cruz v. Beto*, 405 U.S. 319 (1972); *Haines v. Kerner*, 404 U.S. 519 (1972); *Malone v. Colyer*, 710 F.2d 258,260 (6th Cir. 1983); *Conley v.Gibson*, 335 U.S. 41, 45-46(1957); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Rauch v. Day & Night Mfg. Corp.*, 576 F2d 697 (6th Cir. 1978); & *Westlake v. Lucas*, 537, F.2d 857 (6th Cir. 1976). A thorough review of these cases, however, reveals that they actually support a reversal of her ruling, ***viz***,

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<u>Cruz v. Beto</u>, "Granting the plaintiff's motion in forma pauperis and his petition for certiorari, the United States Supreme Court vacated the judgment and

remanded the cause for a hearing and findings"; "Federal courts sit not to supervise prisons, but to enforce the constitutional rights of all 'persons', which include prisoners"; {***HR4} [4] "We said in ***Conley* v. *Gibson***, 355 U.S. 41, 45-46, that 'a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'"; & {**1082} ..." **If the allegations of this complaint are assumed to be true, as they must be on the motion to dismiss**, Texas has violated the First and Fourteenth Amendments." (emphasis added)

Haines v. Kerner, et al, i.e., "The District Court dismissed the complaint for failure to state a claim upon which relief could be granted, and the United States Court of Appeals for the Seventh Circuit affirmed (427 F.2d 71). On certiorari, the United States Supreme Court reversed. In a per curiam opinion, expressing the unanimous views of the court, it was held that since it did not appear beyond doubt that the inmate could prove no set of facts in support of his claim which would entitle him to relief, he was entitled to an opportunity to offer proof."

Malone v. Colyer, i.e., "Trial courts are granted broad discretion to dismiss complaints as frivolous, but such discretion may not be exercised arbitrarily. ***Byrd v. Wilson***, 701 F.2d 592 at 594, (6th Cir. 1983), citing ***Boyce v. Alizaduh***, 595 F.2d 948, 951-953 (4th Cir. 1979). Therefore, on review this Court must examine the pro se complaint anew to determine whether it is indeed frivolous. Id. Pro se complaints are held to 'less stringent' standards than formal pleadings drafted by lawyers.' ***Haines v. Kerner***, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972). And, the allegations in pro se complaints must be taken as true and construed in favor of the plaintiff. ***Westlake v. Lucas***, 537 F.2d 857, 858 (6th Cir. 1976). ...[*261] The Fourth Circuit follows a standard which varies slightly from ***Estelle v. Gamble***: 'To satisfy the test of frivolousness under §§ 1915(d), it is

accordingly essential for the district court to find 'beyond doubt' and under any 'arguable' construction, 'both in law and in fact' of the substance of the plaintiff's claim that he would not be entitled to relief.' ***Boyce v. Alizaduh***, 595 F.2d at 952. The Tenth Circuit follows a standard unique to itself: 'The test of frivolity is whether a plaintiff can make a rational argument on the law and facts in support of his claim.' ***Wiggins v. New Mexico State Supreme Court Clerk***, 664 F.2d 812, 815 (10th Cir. 1981) (J. Seymour dissenting, at 818, applying ***Estelle v. Gamble***). ...Two of Malone's claims withstand the test of frivolousness we have discussed in this opinion. Therefore, we remand the case to enable him to offer proof on these claims. ...Judgment is affirmed in part and reversed in part. The case is remanded for proceedings consistent with this opinion." (emphasis added)

Conley, et al, v. Gibson, et al, i.e., "On certiorari, the United States Supreme Court reversed the judgment below. Black, J., speaking for a unanimous Court, held that the Railway Labor Act did not give the Adjustment Board jurisdiction of the controversy, and ruled, further, that the complaint was not to be dismissed either for failure to join the railroad as a defendant (since the railroad was not an indispensable party), or for failure to adequately set forth a claim upon which relief could be granted."

Scheuer v. Rhodes, et al, i.e., "...We granted certiorari [n. 1] in these cases to resolve whether the District Court correctly dismissed civil damage actions, brought under **42 U. S. C. § 1983,** on the ground that these actions were, {****4} as a matter of law, ...

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...against the State of Ohio, and hence barred by the {*234} Eleventh Amendment to the Constitution and, alternatively, that the actions were against state officials who were immune from liability for the acts alleged in

the complaints. ...[S]ince ***Ex parte Young***, 209 U.S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. ***Ex parte Young*** {****11} teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he 'comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected *in his person* to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.' *Id.*, at 159-160. (Emphasis supplied.) ...While it is clear that the doctrine of ***Ex parte Young*** is of no aid to a plaintiff seeking damages from the public treasury, ***Edelman* v. *Jordan, supra; Kennecott Copper Corp.* v. *State Tax Comm'n***, 327 U.S. 573 (1946); ***Ford Motor Co.* v. *Dept. of Treasury***, 323 U.S. 459 (1945); ***Great Northern Life Insurance*** {****12} ***Co.* v. *Read***, 322 U.S. 47 (1944), damages against individual defendants are a permissible remedy in some circumstances notwithstanding the fact that they hold public office. ***Myers* v. *Anderson***, 238 U.S. 368 (1915). See generally ***Monroe* v. *Pape***, 365 U.S. 167 (1961); ***Moor* v. *County of Alameda***, 411 U.S. 693 (1973). In some situations a damage remedy can be as effective a redress for the infringement of a constitutional right as injunctive relief might be in another. ...There is {****30} no such avenue of escape from the paramount authority of the Federal Constitution. When there is a substantial {**1693} showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression.' ***Id.***, at 397-398. ...The District Court acted before answers were filed and without any evidence other than the copies of the proclamations issued by respondent Rhodes and brief affidavits of the Adjutant General and his assistant. In

dismissing the complaints, the District Court and the Court of Appeals erroneously accepted as a fact the good faith of the Governor, and took judicial notice that 'mob rule existed at Kent State University.' There was no opportunity afforded petitioners to contest {*250} the facts assumed in that conclusion. There was no evidence before the courts from which such a finding of good faith could be properly made and, in the circumstances of these cases, such a dispositive conclusion could not be judicially noticed. We can readily grant that a declaration of emergency by the chief executive of a State is entitled to great weight but it is not conclusive. ***Sterling* v. *Constantin, supra***. ...Further proceedings, either by way of summary judgment or by trial on the merits, are required. The complaining parties are entitled to {***105} be heard more fully than is possible on a motion to dismiss a complaint. ...We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. We hold only that, on the allegations of their respective complaints, they were entitled to have them judicially resolved. ...The judgments of the Court of Appeals are reversed and the cases are remanded for further proceedings{****33}consistent with this opinion." (emphasis added)

Rauch v. Day and Night Manufacturing Corp., et al,, i.e., "It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person...

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...of one who has no residence within its territorial jurisdiction, except by {**8} actual service of notice within the jurisdiction upon him or upon someone authorized to accept service in his behalf, *or by his waiver, by general appearance or otherwise, of the want of due service* (emphasis added). ...The judgment of the district court is reversed and the case remanded to the district court for further

proceedings."[10]

Westlake v. Williams, et al, 537 F.2d 857 (6th Cir. 1976), i.e.,"Dismissals of complaints under the civil rights statutes are scrutinized with special care. *See* ***Azar v. Conley,*** 456 F.2d 1382, 1384 [n. 1] (6th Cir. 1972); ***Lucarell v. McNair,*** 453 F.2d 836, 838 (6th Cir. 1972). ...{*861} In our view, Appellant has adequately stated a cause of action for deprivation of needed medical care and the District Court was in error in dismissing the case at the pleading stage. Appellant has alleged that he was forced to endure a period of intense discomfort because his pleas for medical assistance went unheeded by his jailers. He should have the opportunity to prove the truth of his allegations at an evidentiary hearing. Appellees should be directed to respond to Appellant's complaint and, should the trier of fact conclude that Appellant's accusations are true, the District Court is empowered to grant complete relief. ...Reversed and remanded." (emphasis added)

The District Court should have read the entirety of these cases before relying upon them as "authorities" for dismissal of Akers' Complaint.

ARGUMENT VII: DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ABUSED ITS DISCRETION IN THE DENIAL OF AKERS' FUNDAMENTAL RIGHTS TO TRIAL BY A FAIR AND IMPARTIAL JURY AS THE ULTIMATE "FINDER OF FACT"

RULE 38. JURY TRIAL AS OF RIGHT, Federal Rules of Civil Procedure reads:

"**(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment** to the

> Constitution or as given by a statute of the United States **shall be preserved to the parties inviolate**.
>
> **(b) Demand. Any party may demand a trial by jury of any issue triable of right by jury** by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action..." (emphasis added)

The Seventh Amendment to the United States Constitution reads:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to rules of the common law."

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[10] See, e.g., "ARGUMENT III" and, **especially, FN7 thereto**, ***supra***, page 16 hereof.

Without question, Akers has made a such "demand" for trial by jury, on all issues, ***viz***:

> "**FOR TRIAL BY JURY** comprised of twelve (12) disinterested and impartial men and/or women of high moral character and integrity, against all Defendants, on all Counts." [see Akers' Complaint, Joint Appendix at page 143 thereof];

Obviously, the "value in controversy" herein exceeds "twenty dollars"; **Akers is clearly entitled to a "trial by jury" of the instant case**; and, **without question, the District Court has abused Its discretion** in denying Akers that fundamental right.

ARGUMENT VIII: ALTERNATIVELY, THE HEREIN CASE SHOULD BE HELD "IN ABEYANCE" PENDING FILING & DISPOSITION OF AKERS' "PETITION FOR WRIT OF PROHIBITION" SEEKING TO SET ASIDE CONVICTIONS AS UNCONSTITUTIONAL

These Defendants-Appellees and, now, even the District Court, have gone to great length to exploit Akers' remaining "criminal convictions" for felonious "assault" and felonious "stalking" as grounds for dismissal of Akers' instant "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)". Nevertheless, **there can be no doubt, whatsoever**, that those same "convictions" were clearly prohibited by, ***inter alia***, the Fourth, Fifth, Sixth, Eighth, & Fourteenth Amendments to the United States Constitution and **must**, therefore, be **set aside**.[11] The problem, of course, is "timing" and that issue has been extensively addressed within Akers' "ARGUMENT V" [***supra***, pages 23-25 hereof].

If, even after consideration of the hereinabove, this Honorable Court concludes that matter to be of significance, Akers must respectfully ask that the instant case be "held in abeyance" until such time as Akers' "criminal convictions" are properly disposed of. Akers will then, of course, proceed immediately with all measures necessary to effectuate such a disposal.

---

[11] See, e.g., "Akers' Memorandum" [Exhibit 02-6235-11", Joint Appendix at pages 481-488 (esp., FN1 thru FN6); **U.S. v. Casciano** [***id.***, FN70, page 575]; & "ARGUMENT III", **esp.**, FN7 & FN8 thereto [***supra***, pages 16-19].

CONCLUSION

WHEREFORE, with due consideration to all of the foregoing, the Plaintiff-Appellant, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, respectfully asks and prays of this Honorable Sixth Circuit Court of Appeals to "**REVERSE**" the "JUDGEMENT" and "MEMORANDUM OPINION AND ORDER, DISMISSING" as entered on September 25, 2002, by Judge Jennifer B. Coffman, Eastern District of Kentucky-Lexington Division, and remand with instructions that: (1) the case shall forthwith be re-transferred to United States District Court for the Middle Tennessee District-Nashville Division as Case No. 3:00cv1142 therein; (2) the case shall forthwith be set "**FOR TRIAL BY JURY** comprised of twelve (12) disinterested and impartial men and/or women of high moral character and integrity, against all Defendants, on all Counts", **as demanded**; (3) Akers shall be afforded the opportunity to prove the truth of his allegations; (4) the Defendants-Appellees be forthwith directed to answer Akers' complaint; (5) should the jury conclude that Akers' accusations are true, the District Court is empowered to grant complete relief consistent with ***Westlake v. Williams, et al***, *supra*, and ***Haines v. Kerner, et al***. *supra*; **or** (6) **alternatively**, that the case be "held in abeyance" consistent with "ARGUMENT XII" [***supra***, page 29 hereof].

Respectfully submitted,

s/ James G. Akers
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Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

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CERTIFICATION OF COMPLIANCE

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, hereby certifies that the foregoing "FINAL BRIEF FOR PLAINTIFF-APPELLANT" fully complies with FRAP 32(a)(7)(C) inasmuch as, according to the "WORD PERFECT 9" program utilized, the said "FINAL BRIEF FOR PLAINTIFF-APPELLANT" contains **exactly** 62,673 characters; **11,633 words**; 486 sentences; **966 lines**; 239 paragraphs; & **30 pages** (**excluding** those items listed in 6 Cir. R. 28(b) and/or Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure).

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
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REQUEST FOR ORAL ARGUMENTS

The District Court has rendered a thirty-four (34) page **"MEMORANDUM OPINION AND ORDER, DISMISSING"** and cited no less than **eighty-four (84) cases** as purported "authorities" in support of Its ruling. It would be virtually impossible to address all those issues and cases within the limitations imposed upon this "brief" by F.R.A.P 32(a)(7).

Akers believes that, within his hereinabove "ARGUMENT(S) I through VIII", he has adequately addressed all significant issues presented by the District Court – and has provided this Honorable Court with **compelling arguments** in support of remand. If, however, the Court finds any remaining contentions of the District Court to be conclusively meritorious, Akers must hereby respectfully request that "oral arguments" be granted pursuant to F.R.A.P. 34(a)(2) **and** 6 Cir. R. 34(a), in order that his "due process rights" to be heard will be properly respected.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
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Brentwood, Tennessee 37024
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FINAL DESIGNATION OF APPENDIX CONTENTS

PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654 **in conjunction with** 6 Cir. R. 28(d) and/or 6 Cir. R. 30(b), hereby files and serves as an addendum to the foregoing "FINAL BRIEF FOR PLAINTIFF-APPELLANT" designation of the parts of the record included in the "Joint Appendix" as follows:

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02-6235-04	"JUDGEMENT" as entered by Judge Jennifer B. Coffman, U. S. District Court for Eastern District of Kentucky-Lexington Division, on 09/25/02	157
02-6235-05	"MEMORANDUM OPINION AND ORDER, DISMISSING" as entered by Judge Jennifer B. Coffman, U. S. District Court for Eastern District of Kentucky-Lexington Division, on 09/25/02	160
02-6235-06	"Motion to Dismiss or Transfer Venue" filed on behalf of Defendants Thomas L.	

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02-6235-14	Plaintiff James G. Akers' "Motion to Strike 'Defendant Jerry L. Kelly's Motion to Dismiss'"; and "Renewed Motion to Strike; and Motion to Stay Proceedings Pending Determination of 'Venue' by United States Supreme Court" (D.E. #7, Case No. 5:02cv0162), & "Memorandum & Memorandum of Law [in suppor thereof] entered 06/19/02	719
02-6235-15	Plaintiff James G. Akers' "Demand for 'Judgement by Default'; and Motion for Partial Summary Judgement" (D.E. #12, Case No. 5:02cv0162), entered 06/19/02	745
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02-6235-17 Plaintiff James G. Akers' "Motion to Strike [Defendant Defendant Witt's Response Motion to Plaintiff's Motion for Summary Judgement]; and Motion for Sanctions Pursuant to F.R.C.P. 11(c)(1)(A) & 11(c)(2)" (D.E. #28, Case No. 5:02cv0162), entered 08/08/02.....768

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02-6235-23 "Memorandum Opinion and Order" dismissing, "**without prejudice**", Civil Action No. 99-173 in United States District Court for the Eastern District of Kentucky, at Lexington, and as entered 05/17/1999 (Over the "**OBJECTIONS**" of Plaintiff James G. Akers on bases, ***inter alia***, that same is **irrelevant and inadmissible** with respect to the instant Case Nos. 3:00cv1142, 5:02 cv0162, & COA6-02-6235).....874

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
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CERTIFICATE OF SERVICE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, and certifies that I have on this, the 28th day of February, 2003, served two (2) true and complete copies of the foregoing "FINAL BRIEF FOR PLAINTIFF-APPELLANT" upon respective lead counsel for each and every named Defendant-Appellee, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, and in that manner as follows:

(Listing of served Parties and/or their respective Counsel-of-Record are omitted from instant Petition for Writ of Certiorari for the purposes of economy & handling by Court. **See official record for listings.**)

s/ James G. Akers
JAMES G. AKERS, *Plaintiff-Appellant*
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

App. 5

[END OF DOCUMENT]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

In Re	)	
	)	
JAMES G. AKERS,	)	
	)	
Plaintiff-Petitioner,	)	
v.	)	**FILE NO. 5:02cv0162**
	)	
	)	
CAROLYN P. BISHOP; *et al,*	)	
	)	
Defendants-Respondents.	)	
_____	)	

NOTICE OF APPEAL to
UNITED STATES COURT OF APPEALS
for the SIXTH CIRCUIT

NOTICE IS HEREBY GIVEN that James G. Akers, the plaintiff, **without counsel** in strict accordance with Title 28 U.S.C. § 1654, appeals to the United States Court fo Appeals for the Sixth Circuit from the order of the district court for the Eastern District of Kentucky, Lexington Division, entered September 26, 2002, to wit: order of "JUDGEMENT" and contemporaneous "MEMORANDUM OPINION AND ORDER, DISMISSING" the above-styled case and ordering that plaintiff's "Motion[s] to Strike", "Motion for Default Judgement", and "Motion for Summary Judgement" be "DENIED".

The parties to the said order appealed from and the names and addresses of their respective attorneys are as follows:

Plaintiff-Appellant:
(a) James G. Akers

Attorney of record:
James G. Akers, ***pro se***
Post Office Box 3648
Brentwood, Tennessee 37024

Defendants-Appellees:	***Attorney(s) of record***:
(a) Carolyn P. Bishop	Leslie Rosenbaum, Esquire 300 Lexington Building 201 West Short Street Lexington, Kentucky 40507
(b) Doris Fleming	Douglas L. Hoots, Esquire Landrum & Shouse, LLP Post Office Box 951 Lexington, Kentucky 40588-0951
(c) Allen I. Rushing	William W. Allen, Esquire 201 West Short Street Lexington, Kentucky 40507-1269
(d) CBT Does 1 through 40	*[unserved and unrepresented due to foreclosure of discovery]*
(e) Todd M. Layne	Guy R. Colson, Esquire Fowler, Measle & Bell, LLP 300 West Vine Street, Suite 600 Lexington, Kentucky 40507-1660
(f) Donald R. Shannon	Guy R. Colson, Esquire Fowler, Measle & Bell, LLP 300 West Vine Street, Suite 600 Lexington, Kentucky 40507-1660
(g) Jerry L. Kelly	Augustus S. Herbert, Esquire Middleton Reutlinger 2500 Brown & Williamson Tower Louisville, Kentucky 40202
(h) SCC Does 1 through 50	*[unserved and unrepresented due to foreclosure of discovery]*
(i) John J. Vaughan, M.D.	William W. Allen, Esquire 201 West Short Street Lexington, Kentucky 40507-1269

(j) Thomas L. Clark	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(k) Katherine H. Witt	Bennett E. Bayer, Esquire Landrum & Shouse P. O. Box 951 Lexington, Kentucky 40588-2424
(l) FCS Does 1 through 30	*[unserved and unrepresented due to foreclosure of discovery]*
(m) Pamela Miller	Leslye M. Bowman, Dir. of Litig. Lexington-Fayette Urban County Govt. 200 East Main Street Lexington, Kentucky 40507
(n) LFG Does 1 through 60	*[unserved and unrepresented due to foreclosure of discovery]*
(o) Lou A. Red Corn	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(p) CAO Does 1 through 20	*[unserved and unrepresented due to foreclosure of discovery]*
(q) FCC Does 1 through 10	*[unserved and unrepresented due to foreclosure of discovery]*
(r) Rebecca M. Overstreet	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601

(s) Cindy G. Schwartz	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(t) Ernest W. Williams	Patrick W. Michael, Esquire Woodward, Hobson & Fulton 2500 National City Tower Louisville, Kentucky 40202
(u) Todd D. Ferguson	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601
(v) Pamela R. Goodwine	D. Brent Irvin, Asst. Atty. Gen. Commonwealth of Kentucky Capitol Building, Suite 118 700 Capitol Avenue Frankfort, Kentucky 40601

DATED: October 3, 2002

SIGNED: s/ James G. Akers
*Plaintiff-Appellant, **pro se***

ADDRESS: Post Office Box 3648
Brentwood, TN 37024

[END OF DOCUMENT]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

JAMES G. AKERS,	)	CASE NO: 5:02cv0162
	)	
Plaintiff-Petitioner,	)	JENNIFER B. COFFMAN,
	)	Judge
v.	)	
	)	Eastern District of Kentucky
	)	**FILED**
CAROLYN P. BISHOP; *et al*,	)	OCT 04 2002
	)	AT LEXINGTON
Defendants-Respondents.	)	LESLIE G. WHITMER
	)	CLERK U.S. DISTRICT COURT

RESPONSES & OBJECTIONS TO: "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS"

COMES THE PLAINTIFF-PETITIONER, James G. Akers (hereinafter "Akers'), **without counsel** in strict accordance with Title 28 U.S.C. § 1654; without acknowledging that United States District Court for the Eastern District of Kentucky, at Lexington, is one of proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" (hereinafter "Akers' Complaint) as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000; and in strict accordance with Rules 6(a) & 6(e) of the Federal Rules of Civil Procedure in conjunction with Local Rule 7.1(c)(1), files the following RESPONSES & OBJECTIONS TO: "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS " as served by counsel Leslie Rosenbaum and/or the law firm of Rosenbaum & Rosenbaum, P.S.C., on September 17, 2001.

1. The entire essence of the said "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" appears to be as follows:

(A) "The Defendant, Carolyn Bishop previously filed a Motion to Dismiss on or about December 15, 2000, and an amended Motion to Dismiss and accompanying memorandum on or about January 16, 2001" [see: "MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS", D.E. #40 herein, page 1, lines 9 - 11];

(B) "Since the United States Supreme Court denied Plaintiff's writ of certiorari on June 24, 2002, this matter is ripe for a ruling by this Court on this and other Defendants' motions to dismiss" [*id.*, lines 11-13];

(C)[i] "There are three basic claims allegedly stated against Carolyn P. Bishop. [ii] The first claim under 42 U.S.C.§ 1983 can be disposed of as was done by Judge Henry R. Wilhoit, Jr., of the eastern District Court of Kentucky on May 17, 1999, when he stated, 'As has previously be established, in order to bring an action pursuant to 42 U.S.C. § 1983 against a Defendant, that Defendant must have been acting under color of state law. With regard to Defendant, Carolyn P. Bishop this complaint charges purely private conduct, conduct not reached by 42 U.S.C. §1983.' [iii] Judge Wilhoit cites and this party continues to rely on the cases of: [a] *Parratt v. Taylor*, 451 U.S. 527 (1981), overruled in part on other grounds; [b] *Daniel v. Williams*, 473 U.S. 327, 88 L.Ed. 662, 106 S.Ct. 682 (1986); [c] *Lugar v. Edmondson Oil Co.*, U.S. 922(1987); [d] *Moore v. City of Paducah*, 890 F.2d 831 (6th Cir. 1989); and [e] *Hiser v. City of Bowling Green*, 42 F.3d 382 (6th Cir. 1984) certiorari denied, 115 S.Ct. 1984 (1995). [iv] These Sixth Circuit cases and others make it clear that if a person acts on his own, [a] he or she is not a state actor as contemplated in *Lugar*, [b] acting under color of state law, [c] nor acting as a state agent, [d] nor is such specifically alleged" [*id.*, page 1, line 14 - page 2, line 4];

(D) "Further [i] the Sixth Circuit case attached to

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the brief filed on behalf of the Defendants represented by the Attorney General of Kentucky in this action makes it clear that neither Section 1983 of Title 42, nor the RICO Act can be used by a convicted felon to attack his conviction. That opinion in *Hermansen v. Chandler*, 2000 W.L. 554058 (copy attached to brief of the Commonwealth defendants).[1] [ii] In that opinion the Court makes reference to several other opinions it has written in which it states that in order to recover damages under 42 U.S.C.§1983 (or civil actions under RICO), the plaintiff must first prove that his conviction has been reversed or otherwise been eliminated. [iii] Because Plaintiff's complaint proves that his convictions still stand, [a] a cause of action under Section 1983 of Title 42 or [b] under the RICO statute becomes untenable and [c] no cause of action has been stated against Carolyn P. Bishop. [d] *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d (1994)" [***id.***, page 2, lines 5-16];

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[1] "The Defendants represented by the Attorney General's Office are Judges Thomas Clark, Rebecca Overstreet, Pamela Goodwine, and Kentucky prosecutors Lou Anna Red Corn, Cindy Schwartz and Todd Ferguson." [***id.***, page 2]

(E)[i] "Specifically with regard to 42 U.S.C. § 1985, [a] there has been no allegation in the complaint that the Plaintiff is a member of a protected class, [b] that any discriminatory acts or violations of any of his rights occurred as a result of his failure to be protected as a member of a particular class, or [c] that there is any other discriminatory class action. [ii] As in the case of *Hoai v. Vo*, 935 F.2d 308, 290 U.S.App.D.C. 142 (1991), certiorari denied 112 S.Ct. 1578, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 118 L.Ed.2d 602, Plaintiff's claim is fatally flawed as to Defendant Bishop under 42 U.S.C. §1983 and §1985(c). [iii] That case makes it clear that Plaintiff's inadequate allegations cannot be cured when the complaint [a] does not state which specific actions were under color of state law as to a particular individual, and

[b] there is a total failure to allege insidious discrimination, class based animus or any other violation relating to the alleged conspiracy to deprive Akers of equal protection of laws" [***id.***, page 2, lines 17 - page 3, line 8];

(F)[i] "It is presumed that subsection (3) of §1985 is the only one which would apply in connection with the allegations which have been made in Plaintiff's complaint against Carolyn P. Bishop. [ii] This requires a "class-based, invidiously discriminatory animus" [a] *Hoai v. Vo*, supra at 314. See also [b] *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825, 77 L.Ed.2d 1049, on remand 715 F.2d 161, rehearing denied 464 U.S. 875 (1983), with regard to [c] the issue of racial or similar reason for the so called conspirators' actions" [***id.***, page 3, lines 9 - 14];

(G)[i] "*Bryant v. Commonwealth of Kentucky*, 490 F.2d 1273 (6th Cir. 1974) involved allegations that certain individuals were responsible for the initiation and encouragement of prosecution against Plaintiff and violated his civil rights under § 1983 or § 1985 because of malicious prosecutions. [ii] This seems to be the gravamen of the complaint herein. [iii] The claim was dismissed on summary judgement because the allegations did not state a claim. [a] See also *French v. Corrigan*, 432 F.2d 1211 (7th Cir. 1970), certiorari denied, 91 S.Ct. 890, 401 U.S. 915, 27 L.Ed.2d 814, in terms of [b] difficulty in stating claim under the civil rights statutes because of a conviction in state court. [c] While that was an action to attack a conviction, the case at bar is an attempt at revenge, and this should weigh in favor of its dismissal" [***id.***, page 2, line 15 - page 4, line 1];

(H) "The most persuasive case with regard to the failure to state a cause of action is the case of [i] *Kelm v. Hyatt*, 44 F.3d 415 (6thCir. 1995) in which Plaintiff attempted to sue his wife based on federal civil rights statute because the wife had obtained and enforced a CPO, which is a protective order nearly identical to the domestic violence order in place in Kentucky in the case

at bar. [a] It was held that the Plaintiff's wife was not a state actor and no viable claim could be established against her under the federal civil rights statutes with regard to violation of due process even if [b] there was service of the CPO and enforcement. [ii] There mere use by the wife of the [a] criminal statutes of the state in which she resided [b] does not constitute "state action" or [c] render her a state actor or in any way cause her participation in any state agency" [***id.***, page 4, lines 2-11];

(I) "See also the case of [i] *Offutt v. Kaplan*, 884 F.Supp. 1170 (N.D.Ill. 1995). [ii] In other words, action by a private individual such as Carolyn P. Bishop under a state statute is simply insufficient to [a] convert that party into a state actor or [b] to bring into play any civil rights claim. [c] *Clapp v. LeBouef, Lamb, Leiby and MacRae*, 862 F.Supp. ...

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...1050 (S.D.N.Y. 1994), affirmed, 54 F.3rd 765, certiorari denied, 116 S.Ct. 380, 133 L.Ed.2d 303 [***id.***, page 4, lines 12 - 16];

(J)[i] "Plaintiffs other federal cause of action relates to violation of the RICO Act, discussed briefly above. [ii] It is difficult to determine what the actual RICO allegations are, but as best Defendant, Carolyn P. Bishop can make out, the claim is that [a] Dr. Vaughn, a medical surgeon in Lexington, Kentucky, committed mail fraud by sending a bill for the surgery he performed on her as well as his other services to her insurance company for payment. [b] Carolyn P. Bishop is alleged to be equally responsible for this by virtue of being a co-conspirator in violation of 18 U.S.C.§1962 at which (sic) the offense is described. [iii] A plain reading of the statute reveals how stretched this interpretation is (sic) particularly when taking into account the definitions contained at §1961 of title 18 subsection 1 (sic) [a] defining racketeering activity as '...any act which is indictable under any of the following provisions of title

18, U.S.C. ...§1341 (relating to mail fraud)...' and then [b] requiring conspiracy of the individual. [iii] That section also requires 'a pattern of racketeering activity' requiring at least two acts of racketeering activity" [*id.*, page 4, line 17 - page 5, line 6];

(K)[i] "The law is clear that the gist of the crime of mail fraud is the use of mail in executing the scheme. *United States v. Weatherspoon*, 581 F.2d 595 (7th Cir. 1978). [ii] Then, 18 U.S.C.§1964 provides that an individual who is injured in his business or property by virtue of the 'scheme' or conspiracy may file a civil action. [iii] No injury to either is alleged. [iv] The only property mentioned is a bag of funds allegedly taken prior to the divorce, [a] an item of property that was dealt with by the releases and waivers in the settlement [b] made part of the divorce decree, and [c] referred to by Plaintiff in his complaint and 'Exhibits'. [v] Concerning to (sic) §1964, there are cases in which insurance companies have sued under RICO to recover from Plaintiffs in personal injury laws suits and their co-conspirator physicians and lawyers who have created fictitious or overstated bills for the purpose of fraudulently enhancing personal injury claims. [vi] Under this theory, if in fact Dr. Vaughn (sic) and Carolyn P. Bishop engaged in a conspiracy to fraudulently use the mail to send bills for services that were not performed, then the insurance company paying those bills would have a cause of action under RICO. [vii] Obviously, the nexus of this scheme, [a] to obtain money for Dr. Vaughn (sic), [b] from which is not alleged Carolyn P. Bishop profited, [c] has no relation to the current claim by the Plaintiff, Akers, and [d] his allegations fail to meet even a relaxed interpretation of 18 U.S.C.§1962 which would allow certain individuals who (sic) have standing to bring a civil action under §1964" [*id.*, pg. 5, line 7 - pg. 6, line 1];

(L)[i] "Many other references in the memoranda of other parties discuss the failure to properly fall under RICO, and [ii] this Defendant will not rehash those, inasmuch as [a] she has incorporated their memoranda,

including [b] any immunity issues appropriate for her as a witness" [*id.*, page 6, lines 2 - 5];

(M)[i] "As Judge Wilhoit further noted in his memoranda opinion and order referred to above, [a] once the federal claims are dismissed, [b] assuming one interprets the balance of the allegations as a malicious prosecution action, [c] this would be state cause of action. [ii][a] There would be no federal question left, [b] it being merely a pendent state claim which [c] should be dismissed as well. [iii] By way of information for this court, [a] Kentucky law requires that in an action for malicious prosecution [b] one of the essential...

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...elements of the claim is that the charges resulted in no conviction. [c] *Raine v. Drasin*, 621 S.W.2d 895 (Ky. 1981). [iv] On the face of the complaint the fact Plaintiff's criminal charges are admitted to have resulted in convictions, [v] would preclude an action under Kentucky law for malicious prosecution. [vi] Therefore, Carolyn Bishop also requests that any state claims be dismissed" [*id.*, page 6, lines 6 - 15];

(N) "Wherefore, the defendant, Carloyn P. Bishop, respectfully requests Plaintiff's claims against her be dismissed" [*id.*, page 6, lines 16 - 17].

2. Notwithstanding that the subject "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS' as served and filed by defense counsel, Leslie Rosenbaum, Esquire (hereinafter "Rosenbaum"), and the law firm of Rosenbaum & Rosenbaum, P.S.C., is: (A) substantially lacking in coherence and logic; (B) totally void of merit; (C) in blatant violation of the requirements of F.R.C.P. Rule 10(b); (D) **clearly insufficient** on its face pursuant to F.R.C.P. 8(d), 8(e)(2), & 8(f); and (E) clearly redundant, impertinent, [and] scandalous pursuant to F.R.C.P. 11 & 12(f) and should, accordingly, be ***sua sponte*** "**STRICKEN**" **in its**

entirety, Akers hereby responds and/or objects to the assertions, arguments, and misapprehended legal theorems contained therein in the same hereinabove order and as follows:

(A) **Rosenbaum asserts that**: "The Defendant, Carolyn Bishop previously filed a Motion to Dismiss on or about December 15, 2000, and an amended Motion to Dismiss and accompanying memorandum on or about January 16, 2001". **Akers responds that**: That is true and, as grounds therefore, Rosenbaum argued that (i) The United States District Court for the Middle District of Tennessee-Nashville Division did "not have jurisdiction over her person"; (ii) United States District Court for the Middle District of Tennessee-Nashville Division was one of "improper venue"; & (iii) "for insufficiency of process". Notwithstanding that **both of Bishop's said motions were "DENIED AS MOOT"** by Chief Judge Robert L. Echols in His "ORDER" of transfer and accompanying "MEMORANDUM" as entered in United States District Court for the Middle...

...District of Tennessee-Nashville Division, on September 18, 2001, **surely** Rosenbaum and Bishop do not continue to maintain that these same asserted grounds for dismissal still apply **even after the entire case has been transferred to this Honorable Court**.

(B) **Rosenbaum asserts that**: "Since the United States Supreme Court denied Plaintiff's writ of certiorari on June 24, 2002, this matter is ripe for a ruling by this Court on this and other Defendants' motions to dismiss". **Akers agrees** and staunchly maintains that **each and every one** of those said "motions to dismiss" **must, as a matter of law,** be "**DENIED**" for those reasons set forth within his respective "MOTIONS TO STRIKE" and/or "RESPONSES & OBJECTIONS" thereto as timely filed in this Honorable Court.

(C)[i] **Rosenbaum asserts that**: "There are three basic claims allegedly stated against Carolyn P. Bishop." **Akers responds that**: There are three Federal Statutes, i.e., Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, & Title 42 U.S.C. §

1985(3) which provide for the federal jurisdictional bases for Akers claims asserted against Defendant-Respondent Carolyn P. Bishop **and <u>all other</u> named Defendants-Respondents**. The specific "claims" against Defendant-Respondent Carolyn P. Bishop (hereinafter "Bishop") include, **<u>but are not limited to</u>**, the following:

> <u>COUNT ONE - CONSPIRACY</u>
>
> In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual "persons" and/or "public officials" within the Lexington-Fayette Urban County Government, "associated-in-fact") jointly devised, implemented, and effectuated a "conspiracy" in violation of TITLE 42 U.S.C. § 1985(2) & (3), ***inter alia***, to unlawfully deprive that "class of persons" which included Plaintiff Akers of rights, privileges, and/or immunities secured by, ***inter alia***, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution in that manner set forth in...¶¶E-12 and corresponding FN41 thereto of Akers' Memorandum; and which said "conspiracy" ultimately resulted in a "chain conspiracy" in furtherance thereof as detailed in hereinafter "COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO"; and which "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and which "conspiracy", "chain conspiracies", ...

> ..."overt acts", and "unlawful imprisonment" ultimately resulted in injuries to Akers in his person and property- as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT TWO - CHAIN CONSPIRACY

At some time shortly following August 25, 1993, in Fayette County, Kentucky, herein **Defendants Bishop**, Fleming, Rushing, and CBT Does 1 thru 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., and herein "associated-in-fact"), jointly devised a "chain conspiracy" in violation of TITLE 18 U.S.C. § 1985(2) & (3), ***inter alia***, in the furtherance of that "conspiracy" detailed in hereinabove "Count One", to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, ***inter alia***, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in...¶¶E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and property as are detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, October 28, 1994, in Fayette County and/or Jessamine County, Kentucky, the **Defendants Bishop**, Fleming, Rushing, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), collectively and in concert each with another, with a common

scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove "COUNTS TWO through FOUR", with the intent to deprive Plaintiff Akers of his rights, privileges, and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, ***inter alia***, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific "overt acts" in furtherance thereof and in the manner as set forth in...¶¶E-51, E-54, E-56 through E-58, & E-61 through E-68 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and those injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

As the **proximate result** of those "conspiracies" and "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", Akers was unlawfully...

...imprisoned an aggregate of **SEVEN HUNDRED TWENTY-EIGHT (728) DAYS** in custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner detailed in...¶¶122(b), 125, & 126 of Akers Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT TWELVE - CHAIN CONSPIRACY/COVER-UP

Beginning on, or about, February 27, 1998, and, then, continuing through July 7, 2000, in Fayette County, Jessamine County, and/or Franklin County, Kentucky, **Defendants Bishop**, Fleming, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, SCC Does 1 through 50 (known only as a group of "persons" at Southland Church of Lexington, Inc., and "associated-in-fact"), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of conduct in the furtherance of those "conspiracies" and/or "chain conspiracies" as detailed hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", by committing additional "overt acts" in furtherance and covert concealment thereof as detailed in...¶¶E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "overt acts" resulted in the further "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and those further injuries to Akers in his person and his property detailed in hereinafter "COUNTS TWENTY-FIVE & TWENTY-SIX", all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FOURTEEN - UNLAWFUL MPRISONMENT

As the **proximate result** of those "conspiracies" & "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR"; and "overt acts" in the furtherance thereof as detailed in hereinabove "COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE", **Akers was again "unlawfully imprisoned"** in an aggregate of **SIX HUNDRED SEVEN (607) DAYS** in custody of the Fayette County [Kentucky] Sheriff and, subsequently, the Kentucky Department of Corrections,

and thereby still further injured in his person and his property in that manner as detailed in ¶¶122(b), 125, & 126 of Akers' Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), collectively and in concert each with another, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in subparagraphs (a) through (d) hereinafter; and used income derived therefrom to acquire, maintain interests in, and/or participate in the conduct of the affairs of the "enterprises" known as Southland Christian Church of Lexington, Inc., and...

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..."Association-in-fact" (comprised of all the hereinabove "persons" named as "Defendants" herein, both jointly and severally, and "associated-in-fact") through a "pattern of racketeering activity"; the "activities" of which said "enterprises" having and maintaining affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific said "predicate acts" are as follows:

(a) On or about May 12, 1994, in Fayette County, Kentucky, **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at Southland Christian Church of Lexington, Inc., and herein

"associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of "kidnaping" (in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130) in preparation for the hereinafter predicate acts depicted "COUNT FIFTEEN(b) & (c)" in that manner as set forth in...¶¶E-31, E-32, E-34, & E-38 together with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "predicate act" ultimately resulted in injuries to Akers in his businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum;

(b) From about May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, Jessamine County, Kentucky, and/or Centre City, Minnesota, **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., herein "associated-in-fact"), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as hereinafter "COUNT FIFTEEN(c)", and with common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the predicate act of "unlawful imprisonment" of Akers (in violation of K.R.S. 509.020 and, therefore, as well in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner detailed in...¶¶E-31, E-32, E-34, & E-38 with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in injuries to Akers in his person, businesses, and property further detailed in...¶¶125 & 127 of Akers' Memorandum;

(c) On, or about, June 28, 1994, in Fayette and/or Jessamine County, Kentucky, the

Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), acting collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the additional predicate act of "theft by unlawful taking or disposition" of certain property of Akers and Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00 (in violation of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner as is set forth in...¶E-43 together with FN55 & FN56 thereto, respectively, of Akers' Memorandum; and which said "predicate act" ultimately resulted in injuries to Akers in his businesses and property as are detailed in...¶¶125 & 127 of Akers' Memorandum; &

(d) On or about June 28, 1994, in Fayette County, Kentucky, and Jessamine County, Kentucky, **Defendants Bishop**, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in, the further predicate act of "tampering with physical evidence" (in violation of Title 18 U.S.C. § 1512 & K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner set forth in...¶E-43 together with corresponding FN55 & FN56, respectively, of Akers' Memorandum; and which "predicate act"

ultimately resulted in those injuries to Akers in his person, property, and businesses as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", **Defendants Bishop**, Fleming, and Vaughan, acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in and, thereby, committed those two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter; used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the "enterprises" known as "Dr. John J. Vaughan, M. D.", and the "Association-in-fact" (comprised of all those hereinabove "persons" named as "Defendants" herein, both jointly and severally, corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of those said "enterprises" having maintained affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto, all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, **Defendants Bishop**, Fleming, and Vaughan, proceeding in concert each with the other, with common scheme and purpose, devised, effectuated, implemented, or otherwise participated in, commission of the predicate acts of "wire fraud" (in violation of Title 18 U.S.C. § 1341) and "mail fraud" (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in...¶¶E-2, E-8, E-28, E-35, E-36, E-41, E-42, E-48, & E-48 together with all corresponding footnotes thereto, respectively, of

Memorandum; and which such "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Kelly, collectively and in concert each with the other, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated...

...in hereinafter subparagraph (a); in attempt to derive funds therefrom for use in acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as "Defendants" herein, both jointly and severally, both corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which said "enterprises" having had and maintained affects on "interstate and foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, **Defendants Bishop**, Fleming, and/or Kelly, collectively and in concert each with another, with common scheme and purpose, devised, effectuated, or otherwise participated in the commission of "forgery in the second degree" (in violation of K.R.S. 516.030),

and "theft by extortion" (in violation of K.R.S. 514.040), **both being violations of TITLE 18 U.S.C. §§ 1961 & 1962**, in that manner set forth in...¶¶E-50 together with FN62 of Akers' Memorandum; and which said "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 Akers' Memorandum.

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COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', **Defendants Bishop** & Rushing, acting in concert each with another, with a common scheme and purpose, devised and/or effectuated and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter, in an overt attempt to use income derived therefrom in the acquisition of, maintaining interests in, and/or otherwise participating in conduct of the affairs of the "enterprise" known only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, jointly and severally, and "associated-in-fact") through a "pattern" of "racketeering activity"; the "activities" of which said "enterprise" both having and maintaining affects on "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, **Defendants Bishop** and Rushing, acting in concert each with the other, with a common scheme and purpose,

devised, effectuated, and/or otherwise participated in commission of the two and distinctly separate "predicate acts" of "blackmail" (in violation of Title 18 U.S.C. § 873); **and** "extortion" (in violation of Title 18 U.S.C. § 875), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶E-56 and FN67 of Akers' Memorandum; and which "predicate acts" resulted in injuries to Akers' businesses and property as detailed in ...¶¶125 & 127 of Akers' Memorandum.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through EIGHTEEN', the Defendant Red Corn joined in those "chain conspiracies", "conspiracies', and "overt acts" in the furtherance and concealment thereof, on, or about, November 1, 1995, in Fayette County, Kentucky and/or Jessamine County, Kentucky; and acting both independently and in concert with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in hereinafter subparagraph (a) through (d); having derived funds therefrom and attempting to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known herein only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, as herein "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of which having affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully assisted, influenced, and/or directed **Defendant Bishop** in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-81 & E-82 with FN81 & FN82 thereto, respectively, of Akers' Memorandum; and which "predicate acts" ultimately resulted in injuries to Akers in his businesses and in his as detailed in...¶¶ 125 & 127 of Akers' Memorandum;

COUNT TWENTY-TWO - FINAL OVERT ACTS/ COVER-UP

On, or about, March 30, 2000, in Fayette County, Kentucky, the **Defendants Bishop**, Fleming, Layne, and Witt continued in those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS TWO, THREE, & FOUR"; and "overt acts" in the furtherance and concealment thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; and in the concealment of those "R.I.C.O. Violations" as detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", by conspiring to, participating in, and/or otherwise effectuating schemes to further deprive Akers of privileges and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the Constitution of the United States of America and Article 1, Sections 8 & 10 of the Constitution of Tennessee; were

joined in that "conspiracy" and "final overt acts" in furtherance thereof by Defendant Goodwine on April 13, 2000, in that manner set forth in...¶E-118 together with FN133 thereto, respectively, of Akers' Memorandum; and which "final overt acts" further enhanced injuries to Akers in his...

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...person, property, and businesses as detailed in...¶127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***.

COUNT TWENTY-THREE - FINAL COVER-UP

On, or about, May 19, 2000, in Fayette County, Kentucky, the **Defendants Bishop**, Red Corn, and Overstreet, ***inter alia***, conspired to covertly "conceal" those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS ONE, TWO, THREE, & FOUR"; "overt acts" in the furtherance thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinabove "COUNTS ELEVEN & FOURTEEN"; **and** "R.I.C.O. Violations" detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", in that manner as detailed in...¶¶E-121 through E-124 with FN135 & FN136, respectively, of Akers' Memorandum; and which **additional** **"overt acts"** further enhanced the injuries to Akers in his person, property, and businesses as detailed in... ¶126 & 127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3). [**see**: D.E. #1 herein, pages 96 - 123 thereof, **edited for clerical errors and brevity only**]

(C)[ii] **Rosenbaum argues that**: "The first claim under 42 U.S.C.§ 1983 can be disposed of as was done by Judge Henry R. Wilhoit, Jr., of the Eastern District Court of Kentucky on May 17, 1999, when he stated, 'As has previously be established, in order

to bring an action pursuant to 42 U.S.C. § 1983 against a Defendant, that Defendant must have been acting under color of state law. With regard to Defendant Carolyn P. Bishop, **this complaint** charges purely private conduct, conduct not reached by 42 U.S.C. §1983'" (emphasis added). **Akers responds that**: the operative language here is "**this complaint**", i.e., referring to Akers' previous civil action styled "*James G. Akers v. Commonwealth of Kentucky, et al*" [Civil Action No. 5:99cv0173 herein] filed by Akers in May of 1999, **while still unlawfully imprisoned** at Eastern Kentucky Correctional Complex, with **extremely limited resources**, and **still subject to the Prison Litigation Reform Act** (28 U.S.C. 1915A) & **McGore v. Wrigglesworth, 114 F.3d, 601, 607-8 (6th Cir. 1997)**. Moreover, Judge Wilhoit's specific language within his said "MEMORANDUM OPINION AND ORDER" of May 17, 1999, makes it clear that he construed Akers' then case to be **limited** to the jurisdictional bases provided within Title 42 U.S.C. §1983 **and/or** a "state tort claim of malicious...

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...prosecution", *viz*, as follows:

> "The Plaintiff does not set forth the jurisdictional basis of this document entitled 'Complaint' other that to refer to it as a 'civil action'. Accordingly, it is construed this action is brought pursuant to 42 U.S.C. §1983. It is further construed the plaintiff is attempting to assert a state tort claim of malicious prosecution."

Clearly, those deficiencies have been remedied "in spades" within Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" filed as Case No. 3:00cv1142 in United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [see also: hereinabove ¶ 2.(C)(i)].

(C)[iii] **Rosenbaum further argues that**: "Judge Wilhoit

cites and this party continues to rely on the cases of: [a] *Parratt v. Taylor*, 451 U.S. 527 (1981), overruled in part on other grounds; [b] *Daniel v. Williams*, 473 U.S. 327, 88 L.Ed. 662, 106 S.Ct. 682 (1986); [c] *Lugar v. Edmondson Oil Co.*, U.S. 922 (1987); [d] *Moore v. City of Paducah*, 890 F.2d 831 (6th Cir. 1989); and [e] *Hiser v. City of Bowling Green*, 42 F.3d 382 (6th Cir. 1984) certiorari denied, 115 S.Ct. 1984 (1995)" and **Akers responds as follows**:

(a) A thorough review of *Parratt v. Taylor* reveals that **that case is applicable to Akers' present case – but only with respect to its specific language as follows**:

> "The United States District Court for the District of Nebraska entered summary judgement for prisoner, and prison officials appealed.[2] The United States Court of Appeals for the Eight Circuit, 620 F.2d 307, affirmed, and certiorari was granted. The Supreme Court, Justice Rehnquist, held that although prisoner had been deprived or property under color of state law, **he did not state claim for relief under section 1983, as he did not sufficiently allege violation of due process clause of the Fourteenth Amendment**.[3]

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[2] Since Akers is no longer "in custody" **and should never have been** in light of the specific facts underlying his criminal convictions as detailed within his previous pleadings in the herein case, the herein noted language is cited for "background" purposes with respect to ***Parratt v. Taylor* only**.

[3] Obviously, Akers' herein case is an entirely different matter inasmuch as Akers has both "sufficiently alleged" **and shown** "violation of due process clause of the Fourteenth Amendment", ***inter alia*** [see, e.g., hereinabove ¶ 2(C)(i)].

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[4] Constitutional Law - Fundamental requirements of due process is opportunity to be heard, and it is an opportunity which must be granted at meaningful time and in meaningful manner.

*529 Justice Rehnquist delivered the opinion of the Court.....Respondent claimed that his property was negligently [4] lost...in violation of his rights under the Fourteenth Amendment to the United States Constitution. More specifically, he claimed that he had been deprived of property without due process of law.

[FN2] The Court recognized as much in *Monroe v. Pape*, U.S. 167, 81 S. Ct. 473, 5 L.Ed.2d 492 (1961), when we explained after extensively reviewing the legislative history of § 1983, that.....*[i]t is abundantly clear that one reason the [Title 42 U.S.C. §1983] legislation was passed was to **afford a federal right in federal courts because**, by reason of prejudice, passion, neglect, intolerance or otherwise, ...the claims of citizens to **the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth *535 Amendment might be denied by the state agencies**." *Id.*, at 180, 81 S.Ct., at 480." (***id.***, emphasis and clarification added)

(b) A thorough review of *Daniel v. Williams* reveals that **that case is, as well, applicable to Akers' present case – but only with respect to its specific language as follows**:

"It is not enough to note [that the two prisoners] rely on the Due process Clause of the Fourteenth Amendment, for that clause is the source of three different kinds of constitutional protection. **First**, it incorporates specific protections defined in the Bill of Rights. Thus, **the State, as well as the Federal Government must comply with the commands in the First and Eighth Amendments**, so too, **the State must respect the guarantees in the Fourth, Fifth, [FN5] and Sixth Amendments**. ** 678 **Second**, it contains a substantive component, sometimes referred to as "substantive due process," which **bars certain arbitrary government actions "regardless of the fairness of the procedures used to implement them**." Ante, at 665. **Third, it is a guarantee of fair procedure**, sometimes

referred to as "procedural due process": **the State may not...imprison...a defendant without giving him a fair trial, nor may it take property without providing appropriate procedural safeguards**.

[FN5] *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 l.Ed2d 707 (1969) (**right to protection from double jeopardy applies to States**.)

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[4] There is no evidence that the element of "negligence" was, **in any way whatsoever**, involved in the injuries inflicted upon Akers in his person, property, and businesses by these Defendants-Respondents. Rather, the facts of this case make it **abundantly clear that these Defendants so acted unlawfully with unmistakable "intent", "malice of forethought", and "conspiracy", *inter alia***.

The type of Fourteenth Amendment interest that is implicated has important effects on the nature of the constitutional claim and the availability of § 1983 relief. If the claim is in *338 the first category (a violation of one of the specific constitutional guarantees of the Bill of Rights), **a plaintiff may invoke § 1983 regardless of the availability of a state remedy**.

Similarly, if the claim is in the second category (a violations of the substance component of the Due Process Clause), **a plaintiff may also invoke § 1983 regardless of the availability of a state remedy**.

A claim in the third category –a procedural due process claim –is fundamentally different. In a procedural due process claim, it is not the deprivations of property or liberty that is unconstitutional; **it is the deprivation of property or liberty *without due process of law* – without adequate procedures**." (*supra*, emphasis and clarification added)

(c) Likewise, a thorough review of *Lugar v. Edmondson Oil Co.* reveals that **that case is applicable** to Akers' present case – but, as well, **only with respect to its specific language as follows**:

> "The Supreme Court, Justice White, held that debtor was deprived of his property through state action, corporate creditor and its president having acted under color of state law in participating in that deprivation, and this debtor presented valid cause of action under 1871 civil rights statue insofar as he challenged constitutionality of Virginia statute...
>
> [2] **Joint action with state official to accomplish prejudgement deprivation of constitutionally protected property interest will support claim against private party under 1871 civil rights statute**. U.S.C.A. Const.Amend 14; 42 U.S.C.A§ 1983, Va. Code 1950, §8.01-533.
>
> [3] In action brought against state official under 1871 civil rights statute, **statutory requirement of action "under color of state law" and the "state action" requirement of Fourteenth Amendment are identical**. U.S.C.A.Const.Amend, 14; 18 U.S.C.A. § 242; 42 U.S.C.A. § 1983.
>
> [4] **Civil Rights Act of 1871 was passed for express purpose of enforcing provisions of the Fourteenth Amendment**. U.S.C.A.Const.Amend. 14; 42 U.S.C.A. § 1983; Civil Rights Act of 1871, § 1,17 Stat. 13.
>
> [6] Although under color of state law requirement does not add anything not already included with state action requirement of Fourteenth Amendment, **1871 civil rights statue is applicable to other constitutional provisions and statutory provisions that contain no state action requirement**. U.S.C.A.Const.Amend. 14, 15, 42 U.S.C.A. § 1983.

> [9] Private misuse of state statute does not describe conduct that can be attributed to state, **but procedural scheme created by statute is product of state action** and is thus **subject to constitutional restraints and property may be addressed in action under 1871 Civil Rights Act**, if second element of state action requirement is met as well; 42 U.S.C.A. § 1983; Va. Code 1950, § 8.01-533." (***id.***, emphasis and clarification added)

(d)(i) Further, a thorough reading of *Moore v. City of Paducah* reveals that **that case is also applicable** to Akers' present case – **specifically with respect Defendant-Respondent Pamela Miller and/or the Lexington-Fayette Urban County Government** – but, yet again, **only with respect to its specific language as follows**:

> "**It is well settled that municipalities and their local government units are 'persons' under [42 U.S.C.A. § 1983], and are, therefore, subject to suit**. *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978)(**overruling *Monroe v. Pape***, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). The *Monell* Court reasoned that **municipalities were not free to violate constitutional rights and that the legislative history did not justify excluding municipalities from liability**. Id. 436 U.S. at 700-01, 98 S.Ct. at 2040.
>
> Section 1983 does not reach purely private conduct, but is aimed at action taken under color of state law. See *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed. 2d 420 (1981) (overruled) in part on the grounds, *Daniel v. Williams*,474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986). **The traditional definition**[5] **of this language** requires that the defendant have 'exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.' *West v. Adkins*, 487 U.S. 42, 108 S.Ct. 2250, 2255, 101 L.Ed. 1368 *reh'g denied*. 314 U.S. 707, 62 S.Ct. 51, 86 L.Ed 565 (1941).

However, the modern approach treats 'under color of state law' and 'state action' as coterminous. 'If the challenged conduct of [Green] constitutes state action as delimited by ... prior decisions, then that conduct [is] also action under color of state law and will support a suit under § 1983.' *Lugar v.* Edmondson *Oil Co.*,457, U.S. 922, 935, 192 S.Ct. 2744, 2752, 73, L.Ed.2d 482 (1983); *see also West v. Atkins*, 108 S.Ct. At 2255.[FN6] 192 S.Ct. 2744, 2752, 73, L.Ed.2d 482 (1983); *see also West v. Atkins*, 108 S.Ct. At 2255.[FN6]

FN6. **The importance of these decisions** is evidenced by the fact that **non-§ 1983 state action cases are now authoritative in § 1983 cases**.

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[5] Apparently, it is upon this "traditional" and obsolete "definition" which Bishop and/or Rosenbaum erroneously and/or superficially rely in their herein "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS".

In *United States v. Price*, 383 U.S. 787, 86 S.Ct. 1152, 16 L.Ed.2d 267 (1966), the Supreme Court addressed the 'color of law' language under 18 U.S.C. § 242, the criminal counterpart of 42 U.S.C. § 1983. [FN9] The *Price* Court articulated that '**[t]o act under color of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.**" *Id* at 794, 86 S.Ct. At 1157. **Thus, a private party may conspire with the state and be liable under § 1983**. See, e.g. *Adickes v. Kress & Co.*,398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970).

The standard for proving a civil conspiracy was set forth in *Hooks v. Hooks*, 771 F.2d 935(6th Cir. 1985): **A civil conspiracy is and agreement between two or more persons to injure another by unlawful actions. Express**

> **agreement among all the conspirator's <u>is not necessary</u>** to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. **<u>All that must be shown</u>** is that there was a single plan, that the alleged conspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant. Id. At 943-44." (***supra.***, emphasis and clarification added)

(d)(ii) Thus, Defendant-Respondent Carolyn P. Bishop and her legal counsel, Leslie Rosenbaum and/or the law firm of Rosenbaum & Rosenbaum **<u>could not likely have selected</u> a case to cite** (in addition to those already cited within Akers' previous pleadings in this case) **which <u>more clearly supports</u> the Constitutional, Statutory, and/or Common Law bases for Akers' claims herein.**

(e)(i) And, finally, Bishop and/or Rosenbaum cite the case of *Hiser v. City of Bowling Green*, 42 F.3d 382 (6th Cir. 1984) cert. denied, 115 S.Ct. 1984 (1995) as authority for dismissal of Bishop from Akers' herein civil action. **<u>Not surprisingly</u>, however, that case <u>actually enhances</u> Akers' position <u>as do those cases cited</u> in hereinabove ¶¶ 2.(C)(iiii)(a) through (d).** Moreover, *Hiser* provides **<u>unmistakable</u> bases for "DENIAL"** of the subject "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" pursuant to the specific language contained therein at page 2, [Opinion] II, i.e., as follows:

> "**<u>In deciding a motion to dismiss</u>**,' the complaint is construed in the light **<u>most favorable to plaintiff</u> and its allegations are <u>taken as true</u>**.' 5A CHARLES A. ...

...WRIGHT & ARTHUR R. MILLER FEDERAL PRACTICE AND PROCEDURE § 1357 (2D Ed. 1990). **<u>A complaint will not be</u>**

dismissed for failure to state a claim '**unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief**'. *Conley v. Gibson*, 355 U.S. 41 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d. 80 (1957)." (***supra.***, emphasis and clarification added)

(e)(ii) This Honorable Court is hereby asked to once again consider the fact that **not even a single Defendant has attempted to controvert even a single averment** inasmuch as **they can not do so without placing themselves in peril of yet further sanctions and/or penalties** under Federal Law. **Again, the "merits" of Akers' herein case are not even arguable** and, based upon the specific language within those cases cited in hereinabove ¶¶ 2.(C)(iiii)(a) through (e)(i), the subject "RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS" must be "**DENIED**".

(D)(i) **Rosenbaum argues that**: "...the Sixth Circuit case attached to the brief filed on behalf of the Defendants represented by the Attorney General of Kentucky in this action makes it clear that neither Section 1983 of Title 42, nor the RICO Act can be used by a convicted felon to attack his conviction. That opinion in *Hermansen v. Chandler*, 2000 W.L. 554058 (copy attached to brief of the Commonwealth defendants)." **Akers responds that**: In reality, Rosenbaum is only attempting to re-argue the very same principles set forth within Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364; Rooker, et al., v. Fidelity Trust Co., et al., 263 U.S. 413, 44 S.Ct. 149; and District of Columbia Court of Appeals, et al., v. Marc Feldman and Edward J. Hickey, Jr., 460 U.S. 462, 103 S.Ct. 1303 - **notwithstanding** that Akers' various previous pleadings herein have **clearly shown that those "authorities" are woefully insufficient, misapprehended, and misapplied** with respect to dismissal of any of Akers' claims against **any of these Defendants-Respondents,** i.e., as follows:

HECK V. HUMPHREY [see, e.g., D.E. #78 at ¶ (2)(B).III, page 10, as follows]

"The Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson rely upon **Heck v. Humphrey**, 512 U.S. 477, 114 S.Ct. 2364, as authority for dismissal of Akers' Complaint [see Docket Entry #38 at page 16]. Defendants Witt, Fleming, **Layne**, **Shannon**, Bishop, and Rushing assert essentially the same in their individual motions and memoranda [Docket Entry #43 at (Argument) I; Docket Entry #31 at ¶ 9; Docket Entry #35, pages 16 & 17; Docket Entry #43 at (Argument) I; Docket Entry #63 at page 9, lines 1 thru 3; & Docket Entry #71 at ¶, respectively]. **The Defendants completely miss the point of *Heck v. Humphrey*.**

Heck was convicted of 'voluntary manslaughter' for killing his wife. His conviction has never been reversed and, in fact, was affirmed by Indiana's Court of Appeals and Supreme Court. Heck remained 'in custody' during the entire time of his civil action pursuant to Title 42 U.S.C. § 1983. **There was no question as to whether the state of Indiana had both 'personal jurisdiction' and 'subject matter jurisdiction'** over Heck and his prosecutions. Therefore, **the sole remedy available to Heck was habeas corpus under Federal law.**[6]

By contrast, Akers did not 'kill' **anyone**. In fact, there is no legitimate evidence that Akers did **anything** to Bishop other than slap her for striking him in his groin - under the influence of 'extreme emotional disturbance' as the result of Bishop's previous abuse of Akers' grandchildren. **The only injury to Bishop which can be directly attributed to Akers was a 'slightly-swollen lip'** and there is no legitimate evidence that Akers **'intended' to cause Bishop even that injury.**[7] Akers' conviction for 'First Degree Assault' has been reversed **twice by the Kentucky Court of Appeals as unlawful**. Akers is no longer 'in custody' and **should never have been**. Habeas corpus is no longer a remedy available to Akers and only Title 42 U.S.C. § 1983 remains so available. Moreover, ***Heck v. Humphrey* does not even address any claims comparable to those**

asserted by Akers pursuant to Titles 18 U.S.C. § 1961, et seq, & Title 42 U.S.C. § 1985. ***Heck v. Humphrey*** **just simply does not apply to Akers' herein case** except with respect to its language as follows:

[3] In general, exhaustion of state remedies is not a prerequisite to action under § 1983, even in action by state prisoner. 42 U.S.C.A. 1983.

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[6] **Akers instant case is an entirely different matter** inasmuch as Akers is no longer "in custody" and, therefore, **the Federal habeas corpus statute no longer applies**.

[7] **Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of "assault" of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see "OFFENSE, PENALTY AND BAIL SCHEDULE", APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional "***ex post facto***" enhancement under disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/enhanced 'Domestic Violence & Abuse' laws **and, only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2).**" [see, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, FN8, page 12 thereof]

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[5] Preiser, which held that habeas corpus is exclusive remedy for state prisoner who challenges fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within literal terms of § 1983; did not create [an] exception to "no exhaustion" rule of § 1983; it merely held that certain claims by state prisoners are not cognizable under that provision and must be brought in habeas corpus proceedings, which do not contain exhaustion requirement. 42 U.S.C.A § 1983; 28 U.S.C.A. § 2254.

[6] Common-law cause of action for malicious prosecution, unlike related cause of action for false arrest

and imprisonment, permits damages for confinement imposed pursuant to legal process.

[7] Successful malicious prosecution plaintiff may recover in addition to general damages, compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of society.

[11] Favorable termination of prior proceedings is not element of abuse of process cause of action.

[12] Gravamen of tort of abuse of process is not wrongfulness of prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends.

[18] If district court determines that § 1983 plaintiff's action, even if successful, will not demonstrate invalidity of any outstanding criminal judgement against plaintiff, action should be allowed to proceed, in absence of some other bar to suit. 42 U.S.C.A. § 1983.

[22] State courts are bound to apply federal rules in determining preclusive effect of federal-court decisions on issues of federal law.

CONCURING OPINION

Justice SOUTER, with whom Justice BLACKMUN, Justice STEVENS, and Justice O'CONNER join, concurring in the judgement.

FN3. Some of the traditional common-law requirements appear to have liberalized over the years, see Prosser and Keeton 882 ("There is a considerable minority view which regards the conviction as creating only a presumption, which may be rebutted by any competent evidence showing that probable cause for the prosecution did not in fact exist"), strengthening the analogy the Court draws. ...[The] **Reconstruction-era common law recognizes a limited exception to the rule denying a malicious prosecution plaintiff benefit of the invalidation of his conviction: an exception for**

convictions "obtained by some type of fraud." (emphasis added) Ante, at 2371, n. 4 (citing *Crescent City Live Stock Co. v Butcher's Union Slaughter-House Co.*, 120 U.S. 141, 151, 7 S.Ct. 472, 477, 30 L.Ed. 614 (1887) *Preiser v. Rodriguez*, 411 U.S. 475 93 S.Ct.1827, 36 L.Ed.2d 439 (1973) e.g., Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Preiser, Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Wollf v. McDonnel, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) ante, *498 at 2369-2370.

FN4. ...If...individuals...like state prisoners, were required to show the prior invalidation of their conviction or imprisonment, the result would be to deny any federal forum for claiming deprivation of federal rights to those who cannot first obtain a favorable state ruling. The reason, of course, is that **individuals not "in custody" cannot invoke**...

...**federal habeas jurisdiction, the only statutory mechanism besides § 1983 by which individuals may sue state officials in federal court for violating federal rights**. That would be an untoward result. ...*501 It is one thing to adopt a rule that forces prison inmates to follow the federal habeas route with claims that fall within the plain language of § 1983 when that is necessary to prevent a requirement of the habeas statute from being undermined. That is what the Court did in *Preiser v. Rodriguez*, 411 U.S., at 489-492, 93 S.Ct., at 1836-1838, and that is what the Court's rule would do for state prisoners. Harmonizing § 1983 and the habeas statute by requiring a state prisoner **2380 seeking damages for unconstitutional conviction to establish the previous invalidation of his conviction does not run afoul of what we have called, repeatedly, "[t]he very purpose of" § 1983: "to interpose the federal courts between the States and the people, as guardians of the people's federal

rights." *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); see also Pulliam v. Allen, 466 U.S. 522, 541, 104 S.Ct. 1970, 1980-1981, 80 L.Ed.2d 565 (1984) *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); Patsy v. Board of Regents of Fla., 457 U.S. 496, 503, 102 S.Ct. 2557, 2561, 73 L.Ed.2d 172 (1982). A prisoner caught at the intersection of § 1983 and the habeas statute can still have his court; and, depending on the circumstances, he may be able to obtain § 1983 damages. It would be an entirely different matter, however, to shut off federal courts altogether to claims that fall within the plain language of § 1983. "[I]rrespective of the common law support" for a general rule disfavoring collateral attacks, the Court lacks the authority to do any such thing absent unambiguous congressional direction where, as here, reading § 1983 to exclude claims from federal court would run counter "to § 1983 history" and defeat the statute's "purpose." Wyatt v. Cole, 504 U.S., at 158, 112 S.Ct., at 1828. Consider the case of a former slave framed by Ku Klux Klan-controlled law-enforcement officers and convicted by a Klan-controlled state court of, for example, raping a white woman; and suppose that the unjustly convicted defendant did not (and could not) discover the proof of unconstitutionality until after his *502 release from state custody. If it were correct to say that § 1983 independently requires a person not in custody to establish the prior invalidation of his conviction, it would have been equally right to tell the former slave that he could not seek federal relief even against the law-enforcement officers who framed him unless he first managed to convince the state courts that his conviction was unlawful. That would be a result hard indeed to reconcile either with the purpose of § 1983 or with the origins of what was "popularly known as the Ku Klux Klan Act," *Collins v. Hardyman*, 341 U.S. 651, 657, 71 S.Ct. 937, 939, 95 L.Ed. 1253 (1951), the statute having been enacted in part out of concern that many state courts were "in league with those who were bent upon

abrogation of federally protected rights," *Mitchum v. Foster*, supra, 407 U.S., at 240, 92 S.Ct., at 2161; ef. Cong. Globe, 42d Cong., 1st Sess.., 577 (1871)(Sen. Trumbull explaining that, under the Civil Rights Act of 1871, "**the Federal Government has a right to set aside...action of State authorities" that deprives person of his Fourteenth Amendment rights**"). It would also be a result unjustified by the habeas statute or any other post-§ 1983 enactment. Nor do I see any policy reflected in a congressional enactment that would justify denying to an individual today federal damages...merely because he was unconstitutionally fined by a State, or **to a person who discovers after his release from prison that, for example, state officials withheld exculpatory material**. And absent such a statutory policy, surely the common...

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...law can give us no authority to narrow the "broad language" of § 1983, which speaks of deprivations of "any" constitutional rights, privileges, or immunities, by "[e]very" person acting under color of state law, and to which "we have given full effect [by] recognizing that § 1983 'provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights.'" *Dennis v. Higgins*, 498 U.S. 439, 443, 445, 111 S.Ct. 865, 869-870, 112 L.Ed.2d 969 (1991)(quoting *Monell v. New York City Dept. of Social Svcs.*, 436 U.S. 658, 700-701, 98 S.Ct. 2018, 2040-2041, 56 L.Ed. 611 (1978). *503 In sum, while the malicious-prosecution analogy provides a useful mechanism for implementing what statutory analysis requires, congressional policy as reflected in enacted statutes must ultimately be the guide. I would thus be clear that the proper resolution **2381 of this case (involving, of course, a state prisoner) is to construe § 1983 in light of the habeas statute and its explicit policy of exhaustion. **I would not cast doubt on the ability of an individual**

unaffected by the habeas statute to take advantage of the broad reach of § 1983.

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ROOKER-FELDMAN [see, e.g., D.E. #78 at ¶ (2)(B).IV, page 15 thereof, as follows:]

> Attached and appended as "Exhibit One" thereto Akers' "RESPONSE AND/OR OBJECTIONS TO [DEFENDANT] BISHOP'S 'MOTION FOR PERMISSION TO FILE AN AMENDED MOTION TO DISMISS' & ACCOMPANYING 'MEMORANDUM IN SUPPORT [THEREOF]'" filed and served on January 22, 2001 [Docket Entry #68], was a complete copy of ***Rooker, et al., v. Fidelity Trust Co., et al.***, 263 U.S. 413, 44 S.Ct. 149; and ***District of Columbia Court of Appeals, et al., v. Marc Feldman and Edward J. Hickey, Jr.***, 460 U.S. 462, 103 S.Ct. 1303. Again, with all due respect, Akers can see no proper application to the herein case. To whatever extent the herein defendants argue that any such application exists, Akers asserts that any/all similarities are overridden by hereinabove language of ***Heck v. Humphrey*** **in conjunction with** Title 18 U.S.C. § 1961, et seq., Title 42 U.S.C. §§ 1983 & 1985, together with the authorities in support thereof as cited in Akers' Complaint and Memorandum.[8]

Clearly, while the cases of ***Hermansen v. Chandler***, 2000 W.L. 554058; ***Heck v. Humphrey***, 512 U.S. 477, 114 S.Ct. 2364; ***Rooker, et al., v. Fidelity Trust Co., et al.***, 263 U.S. 413, 44 S.Ct., 149; and ***District of Columbia Court of Appeals, et al., v. Marc Feldman and...***

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[8] Akers would also hasten to add that **the herein Defendants conveniently ignore a key element of the Court's ruling in Rooker, et al., v. Fidelity Trust Co., et al.**, 263 U.S. 413, 44 S.Ct. 149, i.e., "Where constitutional questions actually arose in a cause **in which a state court had jurisdiction of the subject-matter and of the parties**..." [id., HN228]. **In the instant case, it is clear that the Kentucky Court's had neither**.

...***Edward J. Hickey, Jr.***, 460 U.S. 462, 103 S.Ct., 1303, have mutual applicability each with another, **only *Heck v. Humphrey* is properly-applicable to Akers' herein case – and only to that extent set forth hereinabove.**

(D)(ii) **Rosenbaum further argues that**: "In [*Hermansen*] the Court makes reference to several other opinions it has written in which it states that in order to recover damages under 42 U.S.C.§1983 (or civil actions under RICO), the plaintiff must first prove that his conviction has been reversed or otherwise been eliminated." **In response, Akers hereby re-states reiterates** his responses contained within hereinabove 2(C)(iii) through 2(D)(i).

D(iii) **Rosenbaum yet further argues that**: (a) "Because Plaintiff's complaint proves that his convictions still stand, a cause of action under Section 1983 of Title 42 or under the RICO statute becomes untenable and no cause of action has been stated against Carolyn P. Bishop"; & (b) **yet again, asserts** *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d (1994) as authority for dismissal of all claims against Defendant-Respondent Carolyn P. Bishop [***id.***, page 2, lines 5 - 16]. **Akers further responds that**: (a) These Defendants-Respondents and/or their respective legal counsel continue to fraudulently portray Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as a "collateral attack" of his convictions – **notwithstanding** that even they cannot deny that **both were obtained by means of "fraud" and "abuse of process"**, ***inter alia***, and were in clear and distinct violation of provisions of Article 1 - § 9 [Cl.10]; Article 1 - § 10 [Cl. 1]; Article IV - § 2 [Cl. 1]; the entire First Amendment; entire Fourth Amendment;

"Double Jeopardy Clause" of the Fifth Amendment; entire Sixth Amendment; entire Eighth Amendment; and entire Fourteenth Amendment of/to the United States Constitution [see also, e.g., ***North Carolina v. Pearce*** [Akers' Memorandum of 11/21/2000 at FN4]; ***Menna v. New York*** [***id.***]; ***Abney v.***...

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...***United States*** [***id.***]; ***Benton v. Maryland***; [***id.***, FN134]; ***Parratt v. Taylor*** [hereinabove ¶2(C)[iii](a)]; ***Daniel v. Williams*** [hereinabove ¶2(C)[iii](b)]; ***Lugar v. Edmondson Oil Co.*** [hereinabove ¶2(C)[iii](c)]; ***Moore v. City of Paducah*** [hereinabove ¶2(C)[iii](d)]; ***Hiser v. City of Bowling Green*** [hereinabove ¶2(C)[iii](e)]; and **Heck v. Humphrey** [hereabove ¶ 2(D)(i)]. Additionally, Akers hereby re-states and reiterates his assertions contained within, e.g., Akers' "Petition for Writ of Certiorari", as courtesy filed upon this Honorable Court on April 24, 2002, page 180 thereof, ¶ 2(B)(VIII)(i), i.e., as follows:

> "**Not only have Akers' convictions been 'reversed'**, but his **outrageous** 'First-degree Assault' conviction has been reversed **twice - by the Kentucky Court of Appeals**. Akers' 'First-degree Stalking' conviction was reversed **once**, but was affirmed after second conviction based upon, ***inter alia***, the fraudulent testimony of [the herein Defendants-Respondents] **coupled with, and augmented by**, the unconstitutional, fraudulent, and otherwise unlawful acts of Defendants Red Corn, Overstreet, and Ferguson.[9] The mere fact that Akers' was forced to enter an **unconstitutional 'guilty plea'** for 'Assault under Extreme Emotional Disturbance' on July 7, 2000,[10] in order to free himself from the 'tyranny and oppression' of the herein Defendants **does not relieve any of those defendants of any liabilities** under Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, or Title 42 U.S.C. § 1985(3)."[11]

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[9] See ¶¶ 2, 3, 4, 5, 9, 10, 7 [sic (should be "11")], 12, 16, 32, 34, 37, 38, 39, 40, 43 through 47, 50 thru 52, 54, 56, 57, 58, 60 through 63, 64, 65 through 68, 70 through 95, esp. 96, 97 through 101, esp. 102, 103, 104, 107 through 112, 113, esp. 115, 117, 118, esp. 119 thru 127, 128 through 136, 138 through 142, 144 through 150, respectively, of Akers' Complaint **in conjunction with** parallel ¶¶ 2, 3(g), 4, B-1, C, D-1, E-1, E-2, E-12, E-16, E-32, E-34, E-37, E-38, E-40, E-43 thru E-47, E-50 thru E-52, E-54, E-56, E-57, E-58, E-60 thru E-63, E-64, E-65 thru E-68, E-70 through E-95, esp. E-96, E-97 through E-101, esp. E-102, E-103, E-104, E-107 through E-112, E-113, esp. E-115, E-117, E-118, esp. E-119, & E-120 through E-127, together with all footnotes thereto, respectively, of Akers' Memorandum.

[10] **See especially ("Stalking" charge): "*Ex post facto* law" defined** [Akers' Memorandum, page 6]; **Walton v. State**, 1977, 566 P.2d 765, 98 Idaho 422; **Ross v. Hegstrom**, 1969, 254 A.2d 556, 107 Conn. 403; **State v. Phillips**, 1960, 162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63; **People v. ex rel. Johnson v. Ruthazer**, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905; **Clayton v. Michael**, 1966, 141 N.W. 2d 538, 258 Iowa 1037; **Wigehert v. Lockhart**, 1946, ... (continued, page 26 hereof)

[11] **See especially ("Assault" charge): North Carolina v. Pearce, 89 S.Ct. 2089 (1969)** [Akers' Memorandum, FN4, pages 8 thru 10], i.e., "The theory of double jeopardy is that a person need only run the gantlet once. The gantlet is the risk of punishment which the state...imposes for that particular conduct. He risks maximum permissible punishment when first tried. That risk having been faced once need not be faced again. And **the fact that he takes an appeal does not waive his constitutional defense of former**..." (continued, page 26 hereof)

D(iv) Moreover, there yet remains sufficient time to launch a "collateral attack" of Akers' subject unlawful and unconstitutional "convictions" by means of a motion pursuant to R.Cr. 11.42...

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[10] **Wigehert v. Lockhart**, 1946, (continued from page 25 hereof): ...166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; **Pierce v. Creecy**, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; **Ex parte Morgan**, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, cert. denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; **Ex parte Montoya**, 1943, 135 P.2d 281, 170 Or. 499 [id., FN2, page 6]; "**Due process of law defined**" [id.,FN5, page 8];

"Equal protection of the law" defined [id., FN6, page 11]; **"Fraud" defined** [id., FN7, page 13]; **Title 18 U.S.C. §§ 2261A, 2262, & 2265** [id., pages 15 & 16]; **CONSTITUTION OF TENNESSEE: ARTICLE 2, SECTION 8** with FN14 thereto [id., pages 18 & 19] and **ARTICLE 1, SECTION 14** with FN16 thereto [id., page 19]; **TENNESSEE CRIMINAL CODE: "39-17-308. Harassment"** [id., page 21] and **"39-17-309. Civil rights intimidation"** with FN21 thereto [id., page 22] & FN22 [id., page 23]; and **KENTUCKY REVISED STATUTES: "500.060 Territorial applicability"** with FN32 thereto [id., pages 31 & 32]; **"508.140 Stalking in the first degree"** with FN38 thereto [id., page 36].

[11] **North Carolina v. Pearce** (continued from page 25 hereof): "...**jeopardy** to a second prosecution. Green v. United States, 355 U.S. 184, 191-193, 78 U.S. S.Ct. 221, 225, 227, 2 L.Ed.2d 199." ..."In Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872, the **petitioner...736...had already suffered complete punishment for his crime and could not be subjected to further sanction**." 733 "The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorence of government power to try people twice for the same conduct is one of the oldest ideas found in western civilization'. Bartkaus v. Illinois, 359 U.S.-S.Ct. 121, 151-155, 79 S.Ct. 676, 3 L.Ed.2d (Black, J., dissenting). **It prevents the State from using the criminal process as an instrument of harrassment** to wear the accused out by a multitude of cases with accumulated trials. Abbate v. United States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72." "'The vice 735 of this procedure lies in relitagating the same evidence before two different juries with a man's innocence or guilt at stake'. **'Harrasment of an accused by successive prosecutions...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches**. Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...**'This case presents an instance of the prosecution being allowed to harass the accused with repeated trials and convictions on the same evidence, until it achieves its desired result**...' Ciucci v. Illinois, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...It is doubtless true that the State has an interest in adjusting sentences upward 737 when it discovers new evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See United States v. Tateo, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" (emphasis added). **See also: Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty**" (emph. added); **Abney v. United States**, 431 U.S. 651, 97 S.Ct., 52 L.Ed(2d) 651 (1977), i.e., "Double jeopardy clause protects an individual against more than being subjected to double punishments; **it is a guarantee against being twice put to trial for the same offense**. U.S.C.A Const. Amend. 5" (emphasis added); Fourteenth Amendment to the United States Constitution [id., 10 & 11], i.e., "**No State shall make or enforce any law which shall abridge the privileges or**

immunities of citizens of the United States; ...nor deny any person within its jurisdiction **equal protection of the laws**". (emphasis added); and **Benton v. Maryland**, 89 S.Ct. 2056 (1969), i.e., "9. Double jeopardy prohibition of the Fifth Amendment represents **fundamental ideal in constitutional heritage** and it **applies to the states through the Fourteenth Amendment**; overruling Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, U.S.C.A. Const. Amends. 5, 14. 11. Idea underlying constitution **prohibition against double jeopardy** is that state **with all its resources and powers** should not be allowed to make **repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrasment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty**. U.S.C.A. Const. Amend.5." (emphasis added)

...and/or Petition for Writ of Prohibition **in a timely manner** if such remain necessary following the lawful conclusion of Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

D(iii) **Rosenbaum** (b) **yet again, asserts** *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d (1994) as authority for dismissal of all claims against Defendant-Respondent Carolyn P. Bishop. **In response, Akers yet again re-states reiterates** his responses contained within hereinabove 2(D)(i), page 20 hereof.

(E)(i) **Rosenbaum argues that**: "Specifically with regard to 42 U.S.C. § 1985, [a] there has been no allegation in the complaint that the Plaintiff is a member of a protected class, [b] that any discriminatory acts or violations of any of his rights occurred as a result of his failure to be protected as a member of a particular class, or [c] that there is any other discriminatory class action." **Akers responds** by hereby directing Rosenbaum's attention to the very language of Title 42 U.S.C. § 1985, i.e., as follows:

> "**Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury...,

> or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive** <u>any citizen</u>**...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, <u>or</u> class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators."(emphasis added)

Thus, this language, when viewed in tandem with FN10, FN11, & FN12 [Page 17of Akers' Memorandum & Memorandum of Law of 11/21/2000]; ¶¶ 1 through 14, 16, 24, 34, 38, 40...

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...through 43, 47, 50, 58, 64 through 66, 72, 73, 75, 76, 78, 79, 81, 82, 84 through 94, 96 through 97, 99, 101 through 104, 106 through 108, 110 through 113, 115, 116 through 127 of Akers' Complaint of 11/21/2000 (Akers' Copmplaint); <u>and</u> parallel ¶¶ 9, 12, 14, 16, 24, 34, 38, 40 through 43, 47, 50, 58, 64 through 66, 72, 73, 75, 76, 78, 79, 81, 82, 84 through 94, 96 through 97, 99, 101 through 104, 106 through 108, 110 through 113, 115, 116 through 127 of Akers' Memorandum & Memorandum of Law of 11/21/2000 (Akers' Memorandum), together with all corresponding footnotes thereto, respectively, **make it <u>abundantly</u> clear** that [a] there are allegations in the complaint that the Plaintiff is a member of a protected class, (i.e., **a <u>citizen</u> of the United States of America**); [b] that there have been

"discriminatory acts or violations of [Akers'] rights as a result of his failure to be protected as **a citizen of the United States of America**. With respect to "[c] that there is any other discriminatory class action", **this Court and all of the Defendants-Respondent and/or their respective counsels are certainly aware that Akers can not**, under the law, bring any manner of "class action" – **no matter how justified** – inasmuch as Akers is not an attorney.

(E)(ii) **Rosenbaum cites**: "...the case of *Hoai v. Vo*, 935 F.2d 308, 290 U.S.App.D.C. 142 (1991), certiorari denied 112 S.Ct. 1578, 118 L.Ed.2d 220, rehearing denied 112 S.Ct. 2007, 118 L.Ed.2d 602, [as authority that Akers'] claim is fatally flawed as to Defendant Bishop under 42 U.S.C. §1983 and §1985(c)" and further argues [iii] "That case makes it clear that Plaintiff's inadequate allegations cannot be cured when the complaint [a] does not state which specific actions were under color of state law as to a particular individual, and [b] there is a total failure to allege insidious discrimination, class based animus or any other violation relating to the alleged conspiracy to deprive Akers of equal protection of laws". **Akers responds that**: A thorough review of "that...

...case" reveals that ***Hoai v. Vo*** **in fact supports the validity of Akers' herein claims** by means of its specific language as follows:

> "Private parties may be deemed to have acted "under color of law" within meaning of § 1983 **when they conspire with state officials and when they willfully engage in joint activity with state or its agents**. 42 U.S.C.A § 1983" [***id.***, at HN4].
>
> "Inadequacies in drafting civil rights complaint including **failure to allege action taken under color of law and failure to allege invidiously discriminatory class-based animus**, were not type of defects in pleading that could have been cured by decision of Court of Appeals to allow amended complaint. 42 U.S.C.A. §§

1983, 1985(3) *309 **143 Appeal from the United States District Court for the District of Columbia" [*id.*, at HN6];

"To be actionable under § 1985(3), **alleged conspiracy must be motivated by some class based invidiously discriminatory animus**, 42 U.S.C.A. § 1985(3)" [*id.*, at HN9].

The term "invidious discrimination" is defined as follows:

"Term 'invidious" in context of claim that difference in treatment amounts to treatment amounts to "invidious" discrimination in violation of the Fourteenth Amendment, means arbitrary, irrational and not reasonably related to a legitimate purpose. Eaton v. State, 363 A.2d 440, 441" {Black's Law Dictionary, Sixth Edition, 12th Reprint, 1998]

Thus, the facts of Akers' herein case and as recapitulated within hereinabove ¶ 2.E(i), **can leave no reasonable doubt** that: (a) Akers does, in fact, state specific unlawful "overt acts" by Bishop and her co-conspirators which were, clearly, under "color of state law"; **and** [b] **there is absolutely no "failure to allege insidious discrimination**, ...or...other violation relating to the alleged conspiracy to deprive" Akers of equal protection of laws.

(F)(i) **Rosenbaum further asserts that**: "It is presumed that subsection (3) of §1985 is the only one which would apply in connection with the allegations which have been made in Plaintiff's complaint against Carolyn P. Bishop." **Akers responds that**: Rosenbaum should only "**presume**" that Akers' herein claims are well-founded in Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, Title 42 U.S.C. § 1985(3) and all those other Constitution, Statutory, & Common...

...Law provisions as cited within Akers' Complaint and

Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000.

(F)(ii) **Rosenbaum continues to argue that**: In order to sustain a claim under Title 42 U.S.C.A. § 1985(3), Akers must plead "class-based, invidiously discriminatory animus", **to which Akers hereby restates and reiterates** his response in hereinabove ¶ 2.E(ii). With respect to the additional "authority" cited by Rosenbaum, i.e., *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825, 77 L.Ed.2d 1049, on remand 715 F.2d 161, rehearing denied 464 U.S. 875 (1983), after thorough review, Akers can find no proper application to Akers' herein case - except for the explicit statement of Justice BLACK in his closing remarks, ***viz***, "...**the Court will, of course, enforce any statute within the power of Congress to enact**." That is all Akers is asking the Federal Courts to do in his instant case - **to enforce the explicit provisions of Title 18 U.S.C. § 1964 et seq., Title 42 U.S.C. § 1983, Title 42 U.S.C. § 1985(3)**.

(G)(ii) **Rosenbaum attempts to minimize that**: "[T]he gravamen of the complaint herein...seem to be" that of "malicious prosecutions" and, thereby, invoke Kentucky Law and its pendant statute of limitations. **Akers responds that**: He has **absolutely no intentions** of asserting a claim under Kentucky Law inasmuch as it is clear that the Kentucky Courts lacked both "subject matter" and "personal" jurisdiction over Akers and his prosecutions **and** adequate Federal remedies are provided for pursuant to Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, Title 42 U.S.C. § 1985(3) **together with** all those other Constitution, Statutory, & Common Law provisions as cited within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000.

(H) **Rosenbaum asserts that**: [i] "The most persuasive case with regard to the failure to state a cause of action is the case of *Kelm v. Hyatt*, 44 F.3d 415 (6thCir. 1995) in which Plaintiff...

...attempted to sue his wife based on federal civil rights statute because the wife had obtained and enforced a CPO, which is a protective order nearly identical to the domestic violence order in place in Kentucky in the case at bar"; [ii] "It was held that the Plaintiff's wife was not a state actor and no viable claim could be established against her under the federal civil rights statutes with regard to violation of due process even if there was service of the CPO and enforcement"; [iii} There mere use by the wife of the criminal statutes of the state in which she resided does not constitute "state action" or render her a state actor or in any way cause her participation in any state agency".

Akers responds that: While all that may have been true in the *Kelm* case, none of those factors apply to the instant case inasmuch the specific unlawful acts committed by Bishop, and enumerated in hereinabove ¶ 2(C)(i), **do not even remotely compare** to those of Amy Kelm. Moreover, the crux of the Court's decision in Kelm revolved around the fact that there remained a "pending state action" and, therefore, the ***Younger*** Abstention Doctrine must be applied. **At no time during Akers herein case** has any state court action remained **either pending or even contemplated**.

(I) **Rosenbaum continues to assert that**: "In other words, action by a private individual such as Carolyn P. Bishop under a state statute is simply insufficient to convert that party into a state actor or to bring into play any civil rights claim" and further relies upon *Offutt v. Kaplan*, 884 F.Supp. 1170 (N.D.Ill. 1995) and *Clapp v. LeBouef, Lamb, Leiby and MacRae*, 862 F.Supp. 1050 (S.D.N.Y. 1994), affirmed, 54 F.3rd 765, certiorari denied, 116 S.Ct. 380, 133 L.Ed.2d 303 as alleged "authorities". **Akers responds that**: A thorough review of these cases reveals that *Offutt*, as well, addressed a case in which there remained a "pending state action" and, therefore, the ***Younger*** Abstention Doctrine required application by the Court. *Offutt* just simply does not apply to Akers' herein case. With respect to *Clapp v. LeBouef, Lamb, Leiby and MacRae*, 862 F.Supp. 1050 (S.D.N.Y. 1994), affirmed, 54 F.3rd 765, certiorari denied, 116 S.Ct. 380, 133 L.Ed.2d 303, ...

...however, that case clearly **does apply** to Akers' herein case – **at least with respect to its language as follows**:

> "**In considering motion to dismiss for failure to state claim, allegations in complaint must be construed favorably to plaintiff**. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A." [*id.*, at HN7, emphasis added]; &
>
> "Mere action by private party under state statute, **without more**, is insufficient to convert party into state actor and satisfy state action requirement for civil right liability. 42 U.S.C.A. § 1983." [*id.*, at HN14, emphasis added]

Clearly, in view of those specific factual allegations – all of which yet remain unchallenged by Defendant-Respondent Bishop – **Akers Complaint provides infinitely "more"**.

(J) **Rosenbaum asserts that**: (i) "Plaintiffs other federal cause of action relates to violation of the RICO Act, discussed briefly above"; (ii) "It is difficult to determine what the actual RICO allegations are, but as best Defendant, Carolyn P. Bishop can make out, the claim is that [a] Dr. Vaughn, a medical surgeon in Lexington, Kentucky, committed mail fraud by sending a bill for the surgery he performed on her as well as his other services to her insurance company for payment. [b] Carolyn P. Bishop is alleged to be equally responsible for this by virtue of being a co-conspirator in violation of 18 U.S.C.§1962 at which (sic) the offense is described"; (iii) "A plain reading of the statute reveals how stretched this interpretation is (sic) particularly when taking into account the definitions contained at §1961 of title 18 subsection 1 (sic) [a] defining racketeering activity as '...any act which is indictable under any of the following provisions of title 18, U.S.C. ...§1341 (relating to mail fraud)...' and then [b] requiring conspiracy of the individual"; & [iv] "That section also requires 'a pattern of racketeering activity' requiring at least two acts of racketeering activity". **In that same order, Akers responds as follows:**

(J)(i) **One of Akers' "other federal cause of action** relates to violation of the RICO Act" **and is discussed, extensively,**

within ¶ 2(C)(i) hereinabove.

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(J)(ii) **There should be nothing "difficult to determine"** about what the actual RICO allegations are. The statutory and factual bases therefore are **clearly set forth** within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000. If Bishop and/or counsel Rosenbaum are substantially illiterate, then perhaps they should seek tutoring or remedial reading classes for help. **Further**, (a) Akers agrees that "Dr. Vaughn, a medical surgeon in Lexington, Kentucky, committed mail fraud by sending [numerous] bills for the surgery he performed on [Bishop] as well as his other services to her insurance company for payment; and that (b) Carolyn P. Bishop is...equally responsible for this..." inasmuch as **both Vaughan and Bishop were certainly aware that Bishop's symptoms were the proximate result of a "pre-existing condition" which Akers had nothing to do with**.

(J)(iii) **Even a cursory reading** of Title 18 U.S.C. § 1961 through § 1965 (R.I.C.O.) as cited on, ***inter alia***, pages 14 & 15 of Akers' Memorandum as filed in United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000, is neither "stretched" **nor misapplied** with respect to Defendants Bishop, Vaughan, **nor any other Defendants with Akers' Complaint**.

(K)(i) **Rosenbaum asserts that**: "The law is clear that the gist of the crime of mail fraud is the use of mail in executing the scheme. *United States v. Weatherspoon*, 581 F.2d 595 (7th Cir. 1978). **Akers offers no dispute.**

(K)(ii) **Rosenbaum further asserts that**: "...18 U.S.C. § 1964 provides that an individual who is injured in his business or property by virtue of the 'scheme' or conspiracy may file a civil action." **Again, Akers offers no dispute.**

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(K)(iii) **Rosenbaum yet further asserts that**: "No injury to either is alleged" and, with that, **Akers strongly disagrees** and hereby directs Rosenbaum's attention to "COUNT SIXTEEN - R.I.C.O. VIOLATIONS", Page 10 hereof.

(K)(iv) **Rosenbaum still further asserts that**: "The only property mentioned is a bag of funds allegedly taken prior to the divorce, [a] an item of property that was dealt with by the releases and waivers in the settlement [b] made part of the divorce decree, and [c] referred to by Plaintiff in his complaint and 'Exhibits'." **In that same order, Akers responds as follows:**

(K)(iv) Akers hereby directs Bishop's and Rosenbaum's attention to "COUNT FIFTEEN - R.I.C.O. VIOLATIONS", Pages 8 - 10 hereof. Moreover, **surely Rosenbaum and/or Bishop do not contend that** "an item of property that [Akers could not, at the time, even prove had been seized by Bishop] was dealt with by the releases and waivers in [an admittedly forged "property settlement agreement"]; ...fraudulently [b] made part of the divorce decree; and, then, [c] referred to by Plaintiff in his complaint and 'Exhibits'" as constituting "forgery in the second degree" (in violation of K.R.S. 516.030), and "theft by extortion" (in violation of K.R.S. 514.040), **both being violations of TITLE 18 U.S.C. §§ 1961 & 1962.**" [see "COUNT SEVENTEEN - R.I.C.O, VIOLATIONS, pages 10 - 11 hereof].

(K)(v) **Rosenbaum then argues that**: "Concerning to (sic) §1964, there are cases in which insurance companies have sued under RICO to recover from Plaintiffs in personal injury laws suits and their co-conspirator physicians and lawyers who have created fictitious or overstated bills for the purpose of fraudulently enhancing personal injury claims. Under this theory, if in fact Dr. Vaughn (sic) and Carolyn P. Bishop engaged in a conspiracy to fraudulently use the mail to send bills for services that were not performed, then the insurance company paying those bills would have a cause of action under RICO." **Akers agrees** and would be more than willing to provide...

...all necessary documentation and testimony to that insurance company in order to prosecute such a claim insofar as such is not yet barred by applicable statute of limitations, ***inter alia***.

(K)(vii) **Rosenbaum yet further argues that**: "Obviously, the nexus of this scheme, [a] to obtain money for Dr. Vaughn (sic), [b] from which is not alleged Carolyn P. Bishop profited, [c] has no relation to the current claim by the Plaintiff, Akers, and [d] his allegations fail to meet even a relaxed interpretation of 18 U.S.C.§1962 which would allow certain individuals who (sic) have standing to bring a civil action under §1964". **Once again, in that same order, Akers responds as follows:**

> (a) Akers does not dispute that "...the nexus of this scheme, [was, apparently] to obtain money for Dr. Vaughn (sic)", and that Akers has no evidence that Bishop shared in the resulting profits of Vaughan. However, **neither of those factors form the bases of Akers' claims against Bishop**. Instead, Akers' claims with respect thereto revolve around the fact that Bishop fraudulently concealed the fact that **all those symptoms from which she suffered were in no way attributable to any act by Akers** but were, nonetheless, fraudulently misused by her and her co-conspirators herein to fraudulently extradite, fraudulently prosecute, and then fraudulently imprison Akers – **all by means of abuse of process – and for the specific illicit purposes of revenge, attention, and sympathy, *inter alia***. Those facts **do form a nexus** for the purposes of Akers' herein claims against Bishop; satisfy **even the most stringent** interpretation of Title 18 U.S.C. §1961, ***et seq.***; and **without question permit Akers to "have standing"** to both bring and sustain the within R.I.C.O. action in the Federal Courts pursuant to that statute inasmuch as Akers was injured in his property and businesses as a proximate result of Bishop's acts.

(L) **Rosenbaum asserts that**: "Many other references in the memoranda of other parties discuss the failure to properly fall under RICO, and [Bishop] will not rehash those, inasmuch as she has incorporated their memoranda, including any immunity issues appropriate for her as a witness". **Akers simply responds that**: The simple truth is that Bishop and/or her legal counsel do not wish to "rehash" the arguments heretofore presented by the remaining Defendants-Respondents and/or their respective legal counsel inasmuch as **they cannot defend the arguments presented therein**. Akers remains confident, however, that sooner or later either the Sixth Circuit Court of Appeals and/or the United States Supreme Court will make that point abundantly clear.

(M) **Finally, Rosenbaum argues**: (i) "As Judge Wilhoit further noted in his memoranda opinion and order referred to above, once the federal claims are dismissed, assuming one interprets the balance of the allegations as a malicious prosecution action, this would be state cause of action. There would be no federal question left, it being merely a pendent state claim which should be dismissed as well. [ii] By way of information for this court, Kentucky law requires that in an action for malicious prosecution one of the essential elements of the claim is that the charges resulted in no conviction. *Raine v. Drasin*, 621 S.W.2d 895 (Ky. 1981). [iii] On the face of the complaint the fact Plaintiff's criminal charges are admitted to have resulted in convictions, would preclude an action under Kentucky law for malicious prosecution. [iv] Therefore, Carolyn Bishop also requests that any state claims be dismissed". **Once again, in that same order, Akers responds as follows:**

> (i) **Akers herein claims do not include, nor do they contemplate**, a state claim for "malicious prosecution". They are based upon the specific provisions of Title 18 U.S.C. § 1964(c); Title 42 U.S.C. § 1983; & Title 42 U.S.C. § 1985(3). Regardless of how Rosenbaum wishes to characterize the facts of this case, Akers' Federal claims are...

valid and are wholly-supported by those Constitutional, Statutory, and Common Laws cited within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000. **Akers shall not be deterred** by these hooligan Defendants-Respondents and/or their respective legal counsel in obtaining the redress provided for by, ***inter alia***, those same Federal Laws in conjunction with the First Amendment to the United States Constitution.

(ii) **Once again, Akers' herein case does not rely upon "Kentucky law" nor the outrageous manner in which Kentucky law is implemented in violation of its very own Constitution of Kentucky as well as the United States Constitution.** Therefore, *Raine v. Drasin*, 621 S.W.2d 895 (Ky. 1981), a Kentucky case, **bears no proper applicability to Akers' herein case and shall not be recognized as bearing such.**

(iii) Akers' fraudulent criminal charges did, **in fact**, result in fraudulent convictions in violation of those Constitutional, Statutory, and Common Laws cited within Akers' Complaint and Memorandum as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000. Again, **it is immaterial that an action under Kentucky law for "malicious prosecution" is precluded.**

[iv] Obviously, Akers does not oppose the dismissal of any "state claims" under Kentucky law inasmuch as none are either pending or contemplated.

(N) **Rosenbaum then prays**: "Wherefore, the defendant, Carloyn P. Bishop, respectfully requests Plaintiff's claims against her be dismissed". **Akers responds that: not even a single claim** against Bishop, nor **any** of her co-Defendants **can lawfully be dismissed**, neither in part nor in their entirety.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees."; (2) I am a citizen of the United States of America and the State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff- Petitioner James G. Akers; and (5) I have, on this, the 30th day of September, 2002, served a true and complete copy of the foregoing "RESPONSES & OBJECTIONS TO: 'RE-NOTICE AND RENEWAL OF DEFENDANT CAROLYN P. BISHOP'S MOTION TO DISMISS'" via "**UNITED STATES MAIL-FIRST CLASS**", postage pre-paid, upon each and every Defendant-Respondent named therein and/or their respective counsel-of-record as follows: **[Listing of served Parties and/or their respective Counsel-of-Record omitted. See official record for listings.]**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o POST OFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

STATE OF TENNESSEE)
) s/s
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 30th day of September, 2002, has acknowledged the foregoing, and has subscribed her signature thereto in my presence.

s/ Lindsey M. Jesperson
NOTARY PUBLIC, Tennessee-at-large
My Commission Expires: 09/25/2004

[END OF DOCUMENT]

Eastern District of Kentucky
FILED
MAY 13 2002
AT LEXINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

JAMES G. AKERS,	) CIVIL ACTION NO: 5:02cv0162
	)
Plaintiff-Petitioner,	) JUDGE JENNIFER COFFMAN
	)
	) **MOTION TO STRIKE;**
	) **and MOTION TO STAY**
v.	) **PROCEEDINGS PENDING**
	) **DETERMINATION OF**
	) **"VENUE" BY UNITED**
	) **STATES SUPREME COURT**
	)
	)
CAROLYN P. BISHOP; *et al*,	)
	)
Defendants-Respondents.	)

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE-NASHVILLE DIVISION [U. S. SUPREME COURT CASE NO. 01-1619]

COMES THE PLAINTIFF-PETITIONER, James G. Akers (hereinafter "Akers'), **without counsel** in strict accordance with Title 28 U.S.C. § 1654, **without acknowledging** that United States District Court for the Eastern District of Kentucky, at

Lexington, is one of proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" (hereinafter "Akers' Complaint) as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [Civil Action No. 3:00cv1142 therein], and hereby moves this Honorable Court to "**STRIKE**" the "MOTION FOR JUDGEMENT ON THE PLEADINGS" filed by Kentucky Assistant Attorney General D. Brent Irvin, on April 29, 2002, purportedly on behalf of Defendants Thomas L. Clark, Rebecca M. Overstreet, Pamela R. Goodwine, Lou A. Red Corn, Cindy G. Schwartz, & Todd D. Ferguson in strict accordance Rule 12(f) of the Federal Rules of Civil...

...Procedure on grounds that the said "MOTION" is: (A) **clearly insufficient on its face** pursuant to F.R.C.P. 8(d), 8(e)(2), & 8(f); (B) **clearly fraudulent** pursuant to F.R.C.P. 9(b)(1), (2), (3), & (4); and (C) **clearly redundant, impertinent, [and] scandalous** pursuant to F.R.C.P. 11 & 12(f).[1] In further support, Akers' attaches and appends hereto his herewith and contemporaneous "**MEMORANDUM & MEMORANDUM OF LAW**".

The factual allegations contained within Akers' Complaint, when coupled with applicable Constitutional, Statutory, & Common Laws of the United States of America as cited within Akers' "MEMORANDUM & MEMORANDUM OF LAW" (hereinafter "Akers' Memorandum") filed and served contemporaneously therewith Akers' Complaint on November 21, 2000, will speak for themselves. Summarily, the allegations against these Defendants-Respondents include, ***inter alia***, charges that, beginning in about mid-July, 1993, and continuing through July 7, 2000:

> (a) The named Defendants-Respondents engaged in various "conspiracies" and/or "chain conspiracies" in violation of TITLE 42 U.S.C. § 1985 [see Akers' "PETITION FOR WRIT OF CERTIORARI" filed and served on April 24, 2002, ***viz***, "COUNT ONE" through "COUNT FOUR", pages 4 through 6 thereof; "COUNT

TWELVE", pages 9 & 10 thereof; & "COUNT TWENTY-THREE, page 21 thereof] **and, in the furtherance and concealment thereof;**

(b) The named Defendants-Respondents committed numerous specific "overt acts" in violation of TITLE 42 U.S.C. § 1983 [***id.***, ***viz***, "COUNT[S] FIVE through ELEVEN", ...

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[1] **Once again**, Akers must call into question the propriety of Irvin's representation of Defendants named only as individual "persons" as the proximate result of criminal, unconstitutional, and/or otherwise unlawful acts committed in their respective "private capacities" - utilizing the "entire resources of state government" as funded by revenues collected from the innocent taxpayer of Kentucky. **Neither the Commonwealth of Kentucky nor the innocent taxpayers thereof** have been named as parties to Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

...pages 5 - 9 thereof; "COUNT[S] THIRTEEN & FOURTEEN", pages 10 - 11 thereof; & "COUNT[S] TWENTY-TWO & TWENTY-THREE", page 21 thereof] **and, in the course thereof;**

(c) The named Defendants-Respondents committed numerous predicate acts in violation of TITLE 18 U.S.C. § 1961, ***et seq.***, as are all detailed within Akers' Complaint and Memorandum in support [***id.***, ***viz***, "COUNT FIFTEEN through TWENTY-ONE", pages 8 through 11 thereof, for enumerations].

Except for Defendant Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see USDC-MTD Case No. 3:00cv1142, D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7];[2] Defendant Kelly's denial that he has had any contact with Akers since September 23, 1994 [***id.***, D.E. #76, page 2, lines 8 & 9];[2] & Defendant-Respondent Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record"

[USDC-EDKY Case No. 5:02cv0162, D.E. #2 at ¶ 3],[2] **not <u>even a single</u> Defendant-Respondent** has attempted to controvert **<u>even a single</u> averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Respondents **<u>cannot deny the factual allegations against them</u> without subjecting themselves to <u>still further sanctions and/or penalties</u> under Federal Law**. Additionally, Akers would point out that **<u>each and every one</u> of those herein Defendants-Respondents <u>and</u> their respective counsel-of-record** are...

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[2] Even so, the remaining factual allegations would likely be sufficient to obtain a "Summary Judgement" against these Defendants-Respondents – **<u>notwithstanding</u> the fraudulent misrepresentations contained within their said pleadings**. [see USDC-TNMD Case No. 3:00cv1142, D.E. #68, D.E. #69, & D.E. #78, respectively]

...**<u>certainly aware</u>** that Akers has vehemently contested the issue as to whether venue properly lies with this Honorable Court or United States District Court for the Middle District of Tennessee-Nashville Division [***id.***].

This latest pleading by Kentucky's Assistant Attorney General D. Brent Irvin is no less "frivolous" than all his preceding ones in that he and the Defendants-Respondents he purports to represent are now attempting to usurp the appellate function of the **United States Supreme Court** in like manner to that in which they have heretofore **<u>consistently</u> usurped the Constitution and Laws of the United States of America <u>as well as</u> the Constitutions and Laws of <u>both</u> the State of Tennessee <u>and their very own Commonwealth of Kentucky</u>**.

<u>WHEREFORE</u>, for the foregoing reasons <u>in conjunction with</u> those set forth in Akers' herewith "MEMORANDUM & MEMORANDUM OF LAW" and Akers' "PETITION FOR WRIT OF CERTIORARI" as [courtesy] served upon this Honorable Court on April 24, 2002, the Plaintiff-Petitioner, James G. Akers,

without counsel, must respectfully ask and pray of this Honorable Court to "**STRIKE**" the hereinabove "MOTION FOR JUDGEMENT ON THE PLEADINGS" and to "**ORDER**" the within case to be held in abeyance pending determination of the issue of proper venue by the United States Supreme Court.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

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Eastern District of Kentucky
FILED
MAY 13 2002

AT LEXINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

JAMES G. AKERS,	) CIVIL ACTION NO: 5:02cv0162
	)
Plaintiff-Petitioner,	) JUDGE JENNIFER COFFMAN
	)
	) **MEMORANDUM &**
	) **MEMORANDUM OF LAW**
	) **[in support of accompanying]**
v.	) **MOTION TO STRIKE;**
	) **and MOTION TO STAY**
	) **PROCEEDINGS PENDING**
	) **DETERMINATION OF**
	) **"VENUE" BY UNITED**
	) **STATES SUPREME COURT**
	)
CAROLYN P. BISHOP; *et al*,	)
	)
Defendants-Respondents.	)

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE-NASHVILLE DIVISION [U. S. SUPREME COURT CASE NO. 01-1619]

COMES THE PLAINTIFF-PETITIONER, James G. Akers (hereinafter "Akers'), **without counsel** in strict accordance

with Title 28 U.S.C. § 1654, **without acknowledging** that United States District Court for the Eastern District of Kentucky, at Lexington, is one of proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" (hereinafter "Akers' Complaint) as filed in the United States District Court for the Middle District of Tennessee-Nashville Division, on November 21, 2000 [Civil Action No. 3:00cv1142], and files this "MEMORANDUM & MEMORANDUM OF LAW [in support of the accompanying] MOTION TO STRIKE; and MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF 'VENUE' BY [the] UNITED STATES SUPREME COURT" in response and/or objection to the "MOTION FOR JUDGEMENT ON...

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...THE PLEADINGS" filed by Kentucky Assistant Attorney General D. Brent Irvin (hereinafter "Irvin") on April 29, 2002, purportedly on behalf of the herein Defendants-Respondents Thomas L. Clark, Rebecca M. Overstreet, Pamela R. Goodwine, Lou A. Red Corn, Cindy G. Schwartz, & Todd D. Ferguson (hereinafter "Clark", "Overstreet", "Goodwine", "Red Corn", "Schwartz", & "Ferguson", respectively) .

1. In his said "MOTION", Irvin asserts and/or argues as follows:

> (A) "[Clark, Overstreet, Goodwine, Red Corn, Schwartz, & Ferguson] jointly move this Court to grant them judgement on the pleadings and dismiss them from this action based on [i] lack of jurisdiction and [ii] failure to state any cognizable claims against them." [*id.*, page 1, lines 15 - 17 (clarification added];
>
> (B) "This is an action in which a *pro se* plaintiff, James G. Akers, [i] **generally** alleges violations of his civil rights pursuant to 42 U.S.C. §§ 1983, and 1985(3) and [ii] asserts violations of the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. § 1983(c)." [*id.*, page 1, ¶ 1, lines 1 - 4 (emphasis added)]

(C) [i] "This is **at least** Akers' second federal civil suit. [ii] The first civil suit was filed in the Eastern District of Kentucky **while Akers was still a prisoner**. See, Civil Action No. 99-173, styled *James G. Akers v. Commonwealth of Kentucky*. That case was screened **pursuant to the Prison Litigation Reform Act** and dismissed as frivolous by Chief Judge Henry R. Wilhoit, Jr." [***id.***, page 1, ¶ 1, FN1 (emphasis added)];

(D) "Most of the so called 'conspirators' gave the **crime victim** support." [***id.***, ¶ 1, page 2, line 3 (emphasis added)];

(E)[i] "After [Akers] **two criminal convictions were reversed in part and affirmed in part (the stalking conviction was affirmed after the second appeal), Akers ultimately pleaded guilty** on July 7, 2000, to assault under extreme emotional disturbance, a class D Felony. Complaint ¶ 121. [ii] These convictions have never been vacated, reversed, or set aside." [***id.***, ¶ 2, lines 2 - 5 (emphasis & clarification added)];

(F) "Movants herein filed such a motion on December 18, 2000 [D.E. 38] supported by a memorandum of law [D.E. 39] wherein they asserted various defenses including [i] res judicata, [ii] collateral estoppel, [iii] the *Heck v. Humphry* doctrine, [iv] the *Rooker-Feldman* doctrine, or [v] based on their absolute Eleventh Amendment immunities, [vi] judicial immunities, [vii] prosecutorial immunities, or [viii] federal qualified immunities from suit, and [ix] the one year statute of limitations. [x] Any of these defenses are sufficient to defeat all of Akers claims against movants. [xi] The *Heck* doctrine, res judicata, absolute witness immunity and statute of limitations defenses should bar his claims against the remaining defendants who may not be state actors." [***id.***, ¶ 4, page 2, lines 2 - 5; & page 3, lines 1 - 2 (emphasis added)];

(G) "It is anticipated that most of the defendants will waive their rights to file briefs in opposition to [Akers'] petition for writ of certiorari, given that the law is settled and further briefing is not necessary." [***id.***,

page 4, ¶ 11 (clarification added)];

(H) "This case is ripe for consideration of the [i] jurisdictional and [ii] immunity defenses previously asserted in the United States District Court for the Middle District of Tennessee." [*id.*, page 4, "Argument", lines 1 & 2];

(I) "A prompt ruling on these threshold jurisdictional and immunity issues will [i] promote judicial economy and [ii] avoid requiring Akers and his witnesses to travel to Kentucky where he fears such travel expenses will cause 'all of his resources [being] depleted'. [iii] This should also alleviate Akers fear that if he returns to Kentucky he will be subjected to additional criminal charges if he violates the 'yet outstanding and unconstitutional Domestic Violence Order." [*id.*, lines 8 - 12];

(J)[i] "Given the frivolous nature of Akers' Complaint, a quick disposition of this case is in the public interest. [ii] Crime victims and witnesses in criminal proceedings should not be subjected to further harassment by the likes of Akers, who attempts to collaterally attack his conviction while simultaneously pursuing a frivolous civil rights/ RICO Complaint that obviously violates Federal Civil Rule 11. [iii] Akers is not an attorney, but he should have known that his case was frivolous based on Judge Wilhoit's dismissal of his prior federal case." [*id.*, page 5, lines 1 - 6];

(K) "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims will [i] promote judicial economy, [ii] promote the underlying policies behind judicial, quasi-judicial, and qualified immunities, and [iii] should soothe Akers' fears as to the parade of horribles he may be subjected to if he physically returns to Kentucky. [iv] A prompt review of the tendered motions and

memoranda and (sic) will expedite the resolution of this action for all concerned – [v] **especially the innocent victim** of the domestic violence he inflicted, **and all those who gave moral support** to resist Akers' abuse." [***id.***, lines 7 - 13 (emphasis added)];

(L) "In further support of this motion, movants herein adopt and incorporate by reference as if fully set forth herein their memoranda of law filed in support of their motion to dismiss when the case was filed in the United States District Court for the Middle District of Tennessee." [***id.***, page 4, "Argument", lines 14 - 16]; &

(M)[i] "WHEREFORE, defendants ...Overstreet, ...Clark, ...Goodwine, ...Red Corn, ...Schwartz, and...Ferguson respectfully request that this Court enter an order dismissing them from this action based on the principles announced by the Supreme Court in *Heck v. Humphry*; or that these defendants should be dismissed on the *Rooker-Feldman* doctrine or *res judicata*; or that they be dismissed on their respective absolute immunities and prosecutorial immunities from suit, or [vi] their qualified immunities from suit; or as barred by the one year statute of limitations. [ii] In order to avoid piecemeal appeals, defendants urge this Court to *sua sponte* dismiss Akers' Complaint against all the remaining defendants based on all the defenses they asserted before when this case was before the U.S. District Court for the Middle District of Tennessee including *res judicata* and the *Heck* doctrine." [***id.***, page 4, lines 17 - 22; & page 5, lines 1 - 5]

2. In the same hereinabove order as the assertions and/or arguments **yet again presented by Irvin**, on behalf of these **very same** Defendants-Respondents whom he purports to represent, and **in nearly-identical manner** to his **clearly** "**frivolous**" and/or "**fraudulent**" pleadings within...

...United States District Court for the Middle Tennessee District-Nashville Division [Case No. 3:00cv1142], Akers hereby **re-states and reiterates** his "RESPONSE[S] and/or OBJECTION[S] thereto as follows:

> (A)(i) Irvin asserts that: "[Clark, Overstreet, Goodwine, Red Corn, Schwartz, & Ferguson] jointly move this Court to grant them judgement on the pleadings and dismiss them from this action based on lack of jurisdiction" and **Akers' response** is the same as it was every other time these Defendants-Respondents have attempted to raise this ludicrous defense, i.e., as follows:

I - JURISDICTION/VENUE [see, e.g., D.E. #78 at ¶ 2(B).I, page 4 thereof, as follows]

(i) Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson assert "venue is improper in the United States District Court for the Middle District of Tennessee but would be proper in the United States District Court for the Eastern District of Kentucky at Lexington, where most of the defendants reside and all the significant alleged events in Akers' Complaint took place" [Docket Entry #38 at ¶ 4]. The Defendants Witt, Fleming, Layne, Vaughan, and Bishop assert essentially the same in their motions and memoranda [see Docket Entry #42 at ¶ 3; Docket Entry #31 at ¶ 5; #34 at ¶ 4; Docket Entry #51 at ¶ 2(ii); and Docket Entry #63 at Argument III, respectively].

(ii) Unquestionably, the "most significant events" alleged in Akers' Complaint occurred in the Federal District of Middle Tennessee at Nashville, i.e., interstate extortion, interstate fraud, interstate kidnapping/fraudulent extradition, additional interstate extortion and/or blackmail, interstate civil rights intimidation, and numerous violations of the civil rights of a citizen of the United States of America and State of Tennessee.

(iii) Taken at face value, the defendants' arguments, in themselves, would defeat Akers' extradition and subsequent convictions for "stalking" -- notwithstanding obvious elements of "fraud", "conspiracy", and "malice", *inter alia*.[1]

(iv) The Kentucky defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the defendants, thereby subjecting Akers to "more of the same" oppression and tyranny which gave rise to Akers' claims herein asserted and to facilitate additional violations of Titles 18 U.S.C. § 1961, et seq, & Titles 42 U.S.C. § 1983 & 1985 by those defendants.

(v) It is absolutely fascinating that all those herein defendants who are residents of the Commonwealth of Kentucky attempt to invoke defenses of "lack of personal jurisdiction", deficient "*in personam* jurisdiction", and/or "lack of subject matter jurisdiction" -- **the very common law principles which they concertedly ignored, circumvented, suppressed, and denied** throughout the process of fraudulently extraditing/kidnapping Akers from his home State of Tennessee, **then twice fraudulently prosecuting, convicting, and imprisoning him in the Commonwealth of Kentucky**. Apparently, those Kentucky defendants are of the misconception that the United States of America is a province of the "Commonwealth" of Kentucky **rather than the fact** that the "Commonwealth" of Kentucky is a "**territory**" **of the United States of America**

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[1] See Akers' Complaint at ¶¶ 2, 3(d) thru 3(g), 4(d), 5, 10(a) thru 10(w), 7 [(sic) - should be "11"], 12, 24, 31 thru 44, 47, 48 thru 50, 56, 58, 64 (see hereinafter FN9), 65, 66, 68, 70 thru 89, 91, 96 thru 104, 106 thru 112, 115, 117, 118, 121 thru 155, & "PRAYER(S) FOR RELIEF", Akers' Complaint; and ¶¶ A-2, A-3, A-4, E-1, E-2, E-4 with FN40 thereto, E-8, E-9, E-11, parallel ¶¶ E-12 together with FN41 thereto, E-24, E-31 thru E-44 with FN44 thru FN57 respectively thereto, E-47 together with FN59 thereto, E-48 through E-50 together with FN60 through FN62 respectively thereto, E-56, E-54 together with FN65 thereto, E-56 together with FN66 & FN67 thereto, E-58, E-64, E-65, E-66 together with FN70 & FN71 respectively thereto, E-68, E-70 through E-89 together with FN72 through FN95 respectively thereto, E-91 together with FN97 thereto, E-96 through E-104 together with FN101 through FN105 respectively thereto, E-106 through E-112 together with FN106 through FN127 respectively thereto, E-115 together with FN128 thereto, E-117 together with

FN131 thereto, E-118 together with FN133 thereto, and E-121 through E-129 together with FN134 through FN136 respectively thereto of Akers' Memorandum.

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and is, therefore, **subject to the Constitution and laws of the United States of America**. [see Title 18 U.S.C. § 5]

(vi) The Kentucky defendants allege that "[a]ll or nearly all of the fact witnesses are in Kentucky" and that is, simply, not the case. Akers' "case-in-chief" will require at least nine (9) expert witnesses who are residents and maintain offices in Middle Tennessee, together with approximately twenty (20) lay witnesses who are also residents of Middle Tennessee. All "fact witnesses" who are residents of Central Kentucky **have previously testified with respect to every conceivable matter** in Akers' two (2) criminal trials and all such testimony, to whatever extent relevant and admissible, can be utilized by the defendants as depositions or affidavits pursuant to F.R.E. 804.

(vii) In his initial pleading in this case [Docket Entry #20 at ¶ 7], Kentucky Assistant Attorney General D. Brent Irvin issued his "threat" to the effect that: "[in the event that the defendants' motions] to dismiss or transfer this case to United States District Court for the Eastern District of Kentucky at Lexington based on lack of jurisdiction and improper venue...is denied, the Attorney General's Office anticipates it would file an interlocutory appeal to the Sixth Circuit."[2]

(viii) Although it appears that the concept of "equity" is one which the Kentucky defendants either struggle with (or refuse to accept), Akers would remind the Kentucky defendants in this case that all those appellate options which are available to them are equally available to Akers.

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[2] **It is truly remarkable that it is this very same Kentucky Assistant Attorney General D. Brent Irvin, purportedly representing these very same Defendants-Appellees**, who now argues that an "interlocutory appeal" is not permissible under Federal Law.

II - *IN PERSONAM* JURISDICTION [see, e.g., D.E. #78 at ¶ 2(B).VI, page 16, as follows]

(i) This issue has been sufficiently addressed by Akers in his "RESPONSE TO DEFENDANTS' VARIOUS 'MOTION(S) FOR PERMISSION TO PRACTICE PRO HAC VICE'; 'MOTION(S) TO DISMISS'; 'MOTION(S) FOR CHANGE OF VENUE'; RAISED DEFENSES OF VARIOUS IMMUNITIES" served and filed on December 22, 2000. Once again, Akers did not dictate jurisdiction and/or venue for this action. The statutory provisions cited in
Akers' Complaint and his therewith contemporaneously-filed Memorandum did so. Akers did not author those cited statutes. The United States Congress did so. Akers is without province to alter or ignore those cited provisions and so are the Defendants. Moreover, the defendants' assertions respecting transfer of this case to Central Kentucky amounts to nothing more than a ploy to lure Akers back to the jurisdiction of those defendants in this case, and thereby subject Akers to "more of the same" tyranny and oppression which underly Akers' claims herein asserted.

(ii) **The Defendants allege that**:

(a) they lacked "certain minimum contacts" with the State of Tennessee; (b) "[no] acts of the defendants are alleged to have occurred in Tennessee"; and

(c) "[t]he allegations of the complaint reveal that Tennessee has no connection with the defendants and this court's *in personam* jurisdiction, running concurrent with that of the forum state fails."

(iii) **Akers contends that**:

(a) The defendants conveniently ignore (or attempt to mislead this Court with respect to) the fact that Akers was essentially kidnapped from the State of Tennessee (wherein Akers was, at the time, a citizen thereof and good standing therein) for no more than

attempting to exercise his rights under the Constitutions of the United States of America and State of Tennessee based entirely on "fraud", "conspiracy", and "malice", ***inter alia***, of the herein defendants. Once that act of kidnapping and/or fraudulent...

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...extradition had been effectuated, Akers was at the complete mercy of the defendants in this case.

(b) It is immaterial whether any of the presently identified defendants were physically in Tennessee. **The results were the same, i.e., violation of Akers' privileges and immunities secured by the Constitutions of the United States and the State of Tennessee; unlawful imprisonment of Akers; and injuries to Akers' in his person, property, and businesses as detailed in Akers' Complaint.**

(c) The defendants' arguments, taken at face value, in themselves would invalidate Akers' charge, extradition, and two subsequent convictions for "stalking" -- **not even taking into consideration the obvious elements of "fraud", "conspiracy", and "malice, *inter alia*.**[3]

(A)(ii) Irvin asserts that: "[Clark, Overstreet, Goodwine, Red Corn, Schwartz, & Ferguson] jointly move this Court to grant them judgement on the pleadings and dismiss them from this action based on failure to state any cognizable claims against them." **Akers responds** that a "judgement on the pleadings" would be warranted at this particular stage of this case, **but strongly disagrees with Irvin as to whom should be the beneficiary thereof and in which forum such a "judgement" should be entered.** Again, the factual allegations as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18...

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[3] See ¶¶ 2, 3, 4, 5, 9, 10, 7 [sic (should be "11")], 12, 16, 32, 34, 37, 38, 39, 40, 43 through 47, 50 thru 52, 54, 56, 57, 58, 60 through 63, 64, 65 through 68, 70 through 95, esp. 96, 97 through 101, esp. 102, 103, 104, 107 through 112, 113, esp. 115, 117, 118, esp. 119 thru 127, 128 through 136, 138 through 142, 144 through 150; in conjunction with parallel ¶¶ 2, 3(g), 4, B-1, C, D-1, E-1, E-2, E-12, E-16, E-32, E-34, E-37, E-38, E-40, E-43 thru E-47, E-50 thru E-52, E-54, E-56, E-57, E-58, E-60 thru E-63, E-64, E-65 thru E-68, E-70 through E-95, esp. E-96, E-97 through E-101, esp. E-102, E-103, E-104, E-107 through E-112, E-113, esp. E-115, E-117, E-118, esp. E-119, & E-120 through E-127, together with all footnotes thereto, respectively, of Akers' Memorandum].

...U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00cv1142 therein] , when coupled with applicable Constitutional, Statutory, & Common Laws of the United States of America as cited within Akers' "MEMORANDUM & MEMORANDUM OF LAW" filed and served contemporaneously therewith on November 21, 2000, will speak for themselves. Except for Defendant Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see USDC-MTD Case No. 3:00cv1142, D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7];[2] Defendant Kelly's denial that he has had any contact with Akers since September 23, 1994 [***id.***, D.E. #76, page 2, lines 8 & 9];[2] & Defendant-Respondent Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record" [USDC-EDKY Case No. 5:02cv0162, D.E. #2 at ¶ 3],[2] **not <u>even a single</u> Defendant-Respondent** has attempted to controvert **<u>even a single</u> averment** as contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Respondents **<u>cannot deny the factual allegations against them</u> without subjecting themselves to <u>still</u>**

further sanctions and/or penalties under Federal Law.

(B)(i) Irvin asserts that: "This is an action in which a *pro se* plaintiff, James G. Akers, [i] **generally** alleges violations of his civil rights pursuant to 42 U.S.C. §§ 1983, and 1985(3)." **Akers responds that** he has **specifically, and in extreme detail, alleged and shown** violations of his civil rights pursuant to 42 U.S.C. §§ 1983, and 1985(3). **Again**, the factual allegations contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. §..

...1985(3)" [USDC-TNMD Case No. 3:00cv1142 therein], when coupled with applicable Constitutional, Statutory, & Common Laws of the United States of America as cited within Akers' "MEMORANDUM & MEMORANDUM OF LAW" filed and served contemporaneously therewith on November 21, 2000, **will speak for themselves**.

(B)(ii) Irvin asserts that: "This is an action in which a *pro se* plaintiff, James G. Akers, asserts violations of the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. § 1983(c)." **For once, Akers agrees with Irvin** and hereby re-states and reiterates his "response" within hereinabove ¶ 2(B)(i).

(C) (i) Irvin asserts that: "This is **at least** Akers' second federal civil suit." Akers responds that this is **exactly** "**Akers' second federal civil suit.**"

(C)(ii) Irvin asserts that: "The first civil suit was filed in the Eastern District of Kentucky **while Akers was still a prisoner**. See, Civil Action No. 99-173, styled *James G. Akers v. Commonwealth of Kentucky*. That case was screened **pursuant to the Prison Litigation Reform Act** and dismissed as frivolous by Chief Judge Henry R. Wilhoit, Jr." **Akers responds that** the "**operative**" **phraseology** here is: "**while Akers was still a prisoner**";

& "**pursuant to the Prison Litigation Reform Act**". The Honorable Henry R. Wilhoit, Jr., had no alternative but to dismiss Akers' then case, **without prejudice**, pursuant to the specific language contained within ***McGore v. Wrigglesworth,*** 114 F.3d, 610 (6th Cir. 1997); ***Kincade v. Sparkman,*** 117 F.3d 949 (6th Cir. 1997); and the habeas corpus statute discussed, in detail, in ***Heck v. Humphrey,*** 512 U.S. 477, 114 S.Ct. 2364.[4]

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[4] **Akers instant case is an entirely different matter** in that the Commonwealth of Kentucky **has not been named** as a Defendant; Akers is no longer "**in custody**"; and, therefore, **the Eleventh Amendment to the United States Constitution and the Federal habeas corpus statute no longer apply**.

(D) Irvin asserts that: "Most of the so called 'conspirators' gave the **crime victim** support." **Akers responds as follows**:

(i) First and foremost, it is crucial to understand exactly who is the actual "**crime victim**" and who the actual "**criminals**" are in the instant case. The following are excerpts from Akers' various pleadings as filed in the United States District Court for the Middle Tennessee District-Nashville Division, **as well as** the United States Court of Appeals for the Sixth Circuit:

> "On August 25, 1993, just two (2) months preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as 'Bishop'), the Plaintiff, James G. Akers (hereinafter Akers') was awarded a sizeable cash settlement on behalf of Coleman/Akers & Akers, Incorporated (hereinafter "C/AA"), a Kentucky corporation owned an operated by Akers and based in the

Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.

In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; 'Nazi' Germany; and 'cold war era' Soviet Bloc countries, Defendant Bishop and her herein-after named co-conspirators have devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights pursuant to, ***inter alia***, **Article I-Sections 9 & 10, Article III-Section 2, Article IV-Section 2**, and the **First, Fourth, Fifth, Sixth, Eighth, Thirteenth**, and **Fourteenth Amendments** of/to the **United** States **Constitution** and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants **have not been limited** to 'civil rights violations' under 'color of state law', 'color of office', and/or 'malicious prosecution' but extend, in fact, to **criminal acts** in blatant and direct violation of the Federal Laws as hereinafter enumerated.

As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) **assaulted, decoyed, inveigled, and robbed** in May and June of 1994 and, in the covert concealment thereof, was; (b) **unlawfully imprisoned** in May and July of 1994 and, in covert concealment thereof; (c) **blackmailed and/or extorted** from July of 1994 through March of 1995, and in further

concealment thereof; (d) **essentially 'kidnapped' and fraudulently held** in Nashville, Tennessee, during...

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...August and September, 1995, and, in the covert concealment thereof; (e) **fraudulently extradited** back to Kentucky in October of 1995 and, in the **further concealment** of the hereinbefore schemes; (f) **fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned** in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, until April 15, 1998, when; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an 'Opinion and Order', as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

In the further concealment of those said schemes of/by the Defendants and, as an intentional **and continuing course of conduct** by them, Akers was: (a) **further blackmailed/ extorted** in March of 1998; was (b) **further** oppressively imprisoned in April of 1998; was (c) **further blackmailed and/or extorted** from April through October of 1998, and then; (d) **yet again, oppressively and unlawfully prosecuted, convicted, and then imprisoned** for the **very same unconstitutional and fraudulent felony charges**, pursuant to the **very same unconstitutional and fraudulent indictment**.

Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its **second** 'Opinion' on May

19, 2000, in which It **reversed** (in part) Akers' convictions **for the second time** and ruling, in hereunto relevant part, as follows:

> **'It is clear that the trial court failed to follow our instructions on remand';**
>
> **'The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it had not read our decision';**
>
> **'Without reading our decision, the court could not have followed our directives';**
>
> **'While our opinion did not specifically so require, the trial court should have granted Akers separate trials on each count';**
>
> **'By not holding separate trials, the trial court abused its discretion and denied Akers a fair trial...';**
>
> **'Fairness and justice require us to reverse his** (Akers) **conviction...'** (emph. added)

Akers is **not** an attorney, and **does not** have any formal training or education in the Law. Having been forced to expend **vast resources** in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, ...

...further assistance and/or counsel of attorneys

with respect to the matters set forth herein." [Case No. 3:00cv1142, D.E. #1, ¶¶ 1 - 6, pages 2 - 5 thereof];

"The defendants...allege Bishop to be the 'victim' of Akers[5] [supra, page 2, line 4]; and propound their 'paraphrased' version of Judge Wilhoit's 'MEMORANDUM OPINION AND ORDER'[6] in which they 'gloss over' Judge Wilhoit's findings that, in essence, Akers did 'not clearly set forth the jurisdictional basis" and that the Court was without jurisdiction until such time as Akers' convictions had been "declared invalid'. Both deficiencies have subsequently been remedied [see Akers' Complaint (generally) and Akers Memorandum at ¶ 119, page 169, together with footnote [134]]. Inasmuch as the Defendants Witt, Layne, and Vaughan assert essentially the same arguments in their motions and memorandums [Docket Entry #42 at ¶ 3; Docket Entry # 43 at [Argument] VII; & Docket Entry # 35 at ¶ B], Akers' 'response' is the same.

Moreover, Akers' allegations and claims against the herein defendants include, but [are] not limited to, 'conspiracy', 'robbery', 'forgery', 'mail fraud', 'wire fraud', 'interstate extortion/blackmail', 'interstate kidnapping and/or fraudulent extradition', 'jury tampering/fraud on the court', 'obstruction of justice', 'unlawful imprisonment', and numerous violations of Title 18 U.S.C. § 1961 (et seq.) and Titles 42 U.S.C. § 1983 & 1985. Not even a single one of those herein matters have been previously adjudicated and, in fact, have never even been raised prior to the filing of Akers' herein 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. 1983, & TITLE 42 U.S.C. § 1985(3)' on November 21, 2000." [Case No. 3:00cv1142, D.E. #78, ¶ (2)(B).II(i) & (iii), pages 7 - 9 thereof]

(ii) Secondly, **but of no less significance**, is to distinguish the differences between "so called 'conspirators' [giving] the [fraudulently self-proclaimed] crime victim support" and fraudulently, maliciously, overzealously, and/or otherwise unconstitutionally **twice convicting and twice unlawfully imprisoning** her alleged assailant by means of "abuse...

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[5] "**It is a matter of opinion who has been "victimized" by whom**. Ultimately, that issue may be one that only a **fair and impartial jury**, in a **fair and impartial courtroom setting**, and **presided over by a fair and impartial Judge** can decide and is, indeed, an issue inextricably intertwined with the relief Akers seeks in this civil action. **Perhaps Bishop has been "victimized"** in the matters raised in the Kentucky Courts. **The real question, however, is by whom -- by Akers, by herself, or by her co-defendants in this case**? On the other hand, **there can be no question whatsoever whether Akers has been "victimized"** [see Akers' Complaint and Memorandum (generally)] **or by whom**." [Case No. 3:00cv1142, D.E. #78, FN5, page 8 thereof (emphasis added)]

[6] "Unfortunately, Judge Wilhoit categorically accepted **Defendant Schwartz's fraudulent rendition of the facts** of the case at bar. [see Akers' Memorandum, ¶ E-91, page 123, together with corresponding footnote 97 thereto]" [Case No. 3:00cv1142, D.E. #78, FN6, page 8 thereof (emphasis added)]

...of process", "failure to provide equal protection under the law", "double jeopardy and/or multiple punishment", "lack of due process", "lack of jurisdiction", and "fraud on court", ***inter alia***, **all in violation of applicable provisions of the Constitutional, Statutory, & Common Laws of the United States** as are cited within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and therewith "MEMORANDUM & MEMORANDUM OF LAW", as filed and served in United States District Court for the Middle District of Tennessee, on November

21, 2000 – **and without any legitimate evidence that a crime was even committed** absent unconstitutional ***ex post facto*** enhancement. [see, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, ¶ (iii), page 12 thereof] i.e., as follows:

> "**By contrast** [to *Heck v. Humphry*], Akers did not 'kill' **anyone**. In fact, there is no legitimate evidence that Akers **did anything to Bishop** other than slap her for striking him in his groin – under the influence of 'extreme emotional disturbance' as the result of Bishop's previous abuse of Akers' grandchildren. The **only injury to Bishop** which can be directly attributed to Akers was a 'slightly-swollen lip' and there is no legitimate evidence that Akers 'intended' to cause Bishop even **that injury**.[7] **Akers' conviction for 'First Degree Assault' has been reversed twice by the Kentucky Court of Appeals as unlawful**. Akers is **no longer 'in custody' and should never have been.**"

(E) Irvin asserts that: (i) "After [Akers] **two criminal convictions were reversed in part and affirmed in part (the stalking conviction was affirmed after the second appeal), Akers ultimately pleaded guilty** on July 7, 2000, to assault under extreme...

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[7] "**Even under Kentucky law (particularly K.R.S. 508.040)**, Akers' so-called act of "assault" of Bishop was punishable for only **a maximum fine of $250 and/or 90-day sentence in the county jail** [see "OFFENSE, PENALTY AND BAIL SCHEDULE", APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] absent unconstitutional ***'ex post facto'* enhancement** under disguise of implementing, evolutionizing, and/or 'testing the mettle' of Kentucky's newly-enacted/enhanced 'Domestic Violence & Abuse' laws and, **only then, if proceedings had been initiated within the one (1) year statutory period required by K.R.S. 500.050(2).**" [see, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, FN8, page 12 thereof]

...emotional disturbance, a class D Felony. Complaint ¶ 121. [ii] These convictions have never been vacated, reversed, or set aside." **In response, Akers hereby re-states and reiterates** his assertions contained within, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, ¶ (i), page 17 thereof, i.e., as follows:

> "**Not only have Akers' convictions been 'reversed', but his outrageous 'First-degree Assault' conviction has been reversed twice -- by the Kentucky Court of Appeals**. Akers' "First-degree Stalking" conviction was reversed once, but was affirmed after second conviction based upon, ***inter alia***, the fraudulent testimony of Kelly's co-defendants coupled with, and augmented by, the unconstitutional, fraudulent, and otherwise unlawful acts of Defendants Red Corn, Overstreet, and Ferguson.[8] The mere fact that Akers' was forced to enter an **unconstitutional 'guilty plea'** for 'Assault under Extreme Emotional Disturbance' on July 7, 2000,[9] in order to free himself from the 'tyranny and oppression' of the herein Defendants **does not relieve any of those defendants of any liabilities under Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, or Title 42 U.S.C. § 1985(3)**.[10]

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[8] "**See especially (re: 'Stalking' charge)**: '***Ex post facto* law' defined** [Akers' Memorandum, page 6]; **Walton v. State**, 1977, 566 P.2d 765, 98 Idaho 422; **Ross v. Hegstrom**, 1969, 254 A.2d 556, 107 Conn. 403; **State v. Phillips**, 1960, 162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63; **People v. ex rel. Johnson v. Ruthazer**, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905; **Clayton v. Michael**, 1966, 141 N.W. 2d 538, 258 Iowa 1037; **Wigehert v. Lockhart**, 1946, 166 P.2d 988, 114 Colo. 485; **Ex parte Foster**, 1936, 61 P.2d 37, 60 Okla.Cr. 50; **Pierce v. Creecy**, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; **Ex parte Morgan**, D.C.Cal. 1948, 78

F.Supp. 756, affirmed 175 F.2d 404, cert. denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; **Ex parte Montoya**, 1943, 135 P.2d 281, 170 Or. 499 [id., FN2, page 6]; **'Due process of law defined'** [id., FN5, page 8]: 'Equal protection of the law' defined [id., FN6, page 11]; 'Fraud' defined [id., FN7, page 13]; **Title 18 U.S.C. §§ 2261A, 2262, & 2265** [id., pages 15 & 16]; **CONSTITUTION OF TENNESSEE: ARTICLE 2, SECTION 8** with FN14 thereto [id., pages 18 & 19] and **ARTICLE 1, SECTION 14** with FN16 thereto [id., page 19]; **TENNESSEE CRIMINAL CODE**: '**39-17-308. Harassment**' [id., page 21] and "39-17-309. Civil rights intimidation" with FN21 thereto [id., page 22] & FN22 [id., page 23]; and **KENTUCKY REVISED STATUTES: '500.060 Territorial applicability'** with FN32 thereto [id., pages 31 & 32]; '**508.140 Stalking in the first degree**' with FN38 thereto [id., page 36]." [***id.***, FN12, page 17 thereof]

[9] "**See especially (re: 'Assault' charge)**: **North Carolina v. Pearce**, 89 S.Ct. 2089 (1969) [Akers' Memorandum, FN4, pages 8 thru 10], i.e., 'The theory of double jeopardy is that a person need only run the gantlet once. The gantlet is the risk of punishment which the state...imposes for that particular conduct. He risks maximum permissible punishment when first tried. That risk having been faced once need..." (continued, page 18 hereof)

[10] "See, e.g., **North Carolina v. Pearce** [Akers' Memorandum at FN4]; **Menna v. New York** [id.]; **Abney v. United States** [id.]; **Benton v. Maryland**; [id., FN134]; and **Heck v. Humphrey** [hereinafter ¶ 2(b)III]." [***id.***, FN14, page 16 thereof]

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(F) Irvin asserts that: "Movants herein filed such a motion on December 18, 2000 [D.E. 38] supported by a memorandum of law [D.E. 39] wherein they asserted various defenses including (i) res judicata, (ii) collateral estoppel, (iii) the *Heck v. Humphry* doctrine, (iv) the *Rooker-Feldman* doctrine, or (v) based on their absolute Eleventh Amendment immunities, (vi) judicial immunities, (vii) prosecutorial immunities, or (viii) federal qualified immunities from suit". **In response, Akers hereby re-states and...**

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[9] (continued from page 15 hereof): "... not be faced again. And **the fact that he takes an appeal does not waive his constitutional defense of former jeopardy** to a second prosecution. Green v. United States, 355 U.S. 184, 191-

193, 78 U.S. S.Ct. 221, 225, 227, 2 L.Ed.2d 199.' ...'In Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872, the petitioner...[736]...**had already suffered complete punishment for his crime and could not be subjected to further sanction**.' [737] 'The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorence of government power to try people twice for the same conduct is one of the oldest ideas found in western civilization'. Bartkaus v. Illinois, 359 U.S. S.Ct. 121, 151-155, 79 S.Ct. 676, 3 L.Ed.2d (Black, J., dissenting). **It prevents the State from using the criminal process as an instrument of harrassment** to wear the accused out by a multitude of cases with accumulated trials. Abbate v. United States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72.' ''The vice [735] of this procedure lies in relitagating the same evidence before two different juries with a man's innocence or guilt at stake'. '**Harrasment of an accused by successive prosecutions...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches**. Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...'**This case presents an instance of the prosecution being allowed to harass the accused with repeated trials and convictions on the same evidence, until it achieves its desired result**...' Ciucci v. Illinois, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...It is doubtless true that the State has an interest in adjusting sentences upward 737 when it discovers new evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See United States v. Tateo, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" (emphasis added). **See also: Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., 'Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty**.' (emph. added); **Abney v. United States**, 431 U.S. 651, 97 S.Ct., 52 L.Ed(2d) 651 (1977), i.e., 'Double jeopardy clause protects an individual against more than being subjected to double punishments; it is a guarantee against being twice put to trial for the same offense. U.S.C.A Const. Amend. 5' (emphasis added); **Fourteenth Amendment** to the United States Constitution [id., 10 & 11], i.e., '**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States**; ...nor deny any person within its jurisdiction equal protection of the laws'. (emphasis added); and **Benton v. Maryland**, 89 S.Ct. 2056 (1969), i.e., '9. Double jeopardy prohibition of the Fifth Amendment represents **fundamental ideal in constitutional heritage and it applies to the states through the Fourteenth Amendment**; overruling Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, U.S.C.A. Const. Amends. 5, 14. 11. Idea underlying constitution **prohibition against double jeopardy is that state with all its resources and powers** should not be allowed to make **repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrasment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty**. U.S.C.A. Const. Amend.5.' (emphasis added)" [***id.***, FN13, page 17 & 18 thereof]

...**reiterates** his "Responses" and/or "Objections" thereto as contained within, e.g., Akers' "Motion for Reconsideration", as filed in the Sixth Circuit of Appeals on December 10, 2001, i.e., as follows:

(i)/(ii) RES JUDICATA/COLLATERAL ESTOPPEL [see also, e.g., D.E. #78, ¶ (2)(B).II, i.e.]

"Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson assert the doctrines of *res judicata* and/or collateral estoppel on the purported grounds that Akers had previously 'filed a similar civil rights complaint in 1999 in the United States District Court for the Eastern District of Kentucky, while incarcerated at Eastern Kentucky Correctional Complex in West Liberty, Kentucky' and '[t]hat case was screened pursuant to the Prison Litigation Reform Act, and *sua sponte* dismissed as frivolous, without prejudice, by Chief Judge Henry R. Wilhoit, Jr.' [see Irvin's 'MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER VENUE OR DISMISS FOR LACK OF VENUE, LACK OF PERSONAL JURISDICTION, AND FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED', Docket Entry #39, ¶¶ A & B]. The defendants then allege Bishop to be the 'victim' of Akers[11] [supra, page 2, line4]; and propound their 'paraphrased' version of Judge Wilhoit's 'MEMORANDUM OPINION AND ORDER'[12] in which they 'gloss over' Judge Wilhoit's findings that, in essence, Akers did 'not clearly set forth the jurisdictional basis" and that the Court was without jurisdiction until such time as Akers' convictions had been 'declared invalid'. Both deficiencies have subsequently been remedied [see Akers' Complaint (generally) and Akers Memorandum at ¶ 119, page 169, together with footnote 134]. Inasmuch as the Defendants Witt, Layne, and Vaughan assert essentially the same arguments in their motions and memorandums [Docket Entry #42 at ¶ 3; Docket Entry # 43 at [Argument] VII; & Docket Entry # 35 at ¶ B], Akers' 'response' is the same.

To whatever extent any of the defendants argue that Akers' guilty plea of July 7, 2000, operates as a bar under the doctrine of *res judicata*/collateral estoppel, that argument is sufficiently addressed in Akers' Memorandum at ¶ 121 (together with corresponding footnotes 134 & 135 thereto.

Moreover, Akers' allegations and claims against the herein defendants include, **but [are] not limited to**, 'conspiracy', 'robbery', 'forgery', 'mail fraud', 'wire fraud', 'interstate extortion/blackmail', 'interstate kidnapping and/or fraudulent extradition, 'jury tampering/fraud on the court', 'obstruction of justice', 'unlawful imprisonment', and numerous violations of Title 18 U.S.C. § 1961 (et seq.) and Titles 42 U.S.C. § 1983 & 1985. **Not even a single one of those...**

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[11] **"It is a matter of opinion who has been 'victimized' by whom.** Ultimately, that issue may be one that only a fair and impartial jury, in a fair and impartial courtroom setting, and presided over by a fair and impartial Judge can decide and is, indeed, an issue inextricably intertwined with the relief Akers seeks in this civil action. Perhaps Bishop has been 'victimized' in the matters raised in the Kentucky Courts. **The real question, however, is by whom** -- by Akers, by herself, or by her co-defendants in this case? On the other hand, **there can be no question whatsoever whether Akers has been "victimized"** [see Akers' Complaint and Memorandum (generally)] **or by whom."** [id.]

[12] "Unfortunately, Judge Wilhoit categorically accepted Defendant Schwartz's fraudulent rendition of the facts of the case at bar. [see Akers' Memorandum, ¶ E-91, page 123, together with corresponding footnote 97 thereto]" [*id.*] **herein matters have been previously adjudicated** and, in fact, **have never even been raised** prior to the filing of Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. 1983, & TITLE 42 U.S.C. § 1985(3)" on November 21, 2000.

...**herein matter have been previously adjudicated** and, in fact, have never even been raised prior to the filing of Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and

therewith "MEMORANDUM & MEMORANDUM OF LAW", as filed and served in United States District Court for the Middle District of Tennessee, on November 21, 2000.

(iv) Therefore, all of the herein Defendants arguments with respect to "defenses" pursuant to the doctrines of *res judicata* and/or collateral estoppel can only be construed as frivolous attempts to undermine and/or subvert the very essence, spirit, intent(s), and purpose(s) of those constitutional and statutory authorities cited in Akers' Complaint and Memorandum." [*id.*, pages 16 & 17 thereof]

(iii) HECK V. HUMPHREY [see also, e.g., D.E. #78 at ¶ (2)(B).III, page 10, as follows:]

"The Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson rely upon **Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364**, as authority for dismissal of Akers' Complaint [see Docket Entry #38 at page 16]. Defendants Witt, Fleming, Layne, Shannon, Bishop, and Rushing assert essentially the same in their individual motions and memoranda [Docket Entry #43 at (Argument) I; Docket Entry #31 at ¶ 9; Docket Entry #35, pages 16 & 17; Docket Entry #43 at (Argument) I; Docket Entry #63 at page 9, lines 1 thru 3; & Docket Entry #71 at ¶, respectively]. **The Defendants completely miss the point of *Heck v. Humphrey*.**

Heck was convicted of 'voluntary manslaughter' for killing his wife. His conviction has never been reversed and, in fact, was affirmed by Indiana's Court of Appeals and Supreme Court. Heck remained 'in custody' during the entire time of his civil action pursuant to Title 42 U.S.C. § 1983. There was no question as to whether the state of Indiana had both 'personal jurisdiction' and 'subject matter jurisdiction' over Heck and his prosecutions. Therefore, **the sole remedy available to Heck was habeas corpus under Federal law.**

By contrast, Akers did not 'kill' **anyone**. In fact, there is no legitimate evidence that Akers **did anything to Bishop** other than slap her for striking him in his groin - under the influence of 'extreme emotional disturbance' as the result of Bishop's previous abuse of Akers' grandchildren. The **only injury to Bishop** which can be directly attributed to Akers was a 'slightly-

swollen lip' and there is no legitimate evidence that Akers 'intended' to cause Bishop even **that injury.**[13] **Akers' conviction for 'First Degree Assault' has been reversed twice by the Kentucky Court of Appeals as unlawful. Akers is no longer 'in custody' and should never have been.** Habeas corpus is no longer a remedy available to Akers and only Title 42 U.S.C. § 1983 remains so available. Moreover, ***Heck v. Humphrey*** **does not even address any claims comparable to those asserted by Akers** pursuant to Titles 18 U.S.C. § 1961, et seq, & Title 42 U.S.C. § 1985. *Heck v. Humphrey* just simply does not apply to Akers' herein case except with respect to its language as follows:

> [3] In general, exhaustion of state remedies is not a prerequisite to action under § 1983, even in action by state prisoner. 42 U.S.C.A. 1983.
>
> [5] Preiser, which held that habeas corpus is exclusive remedy for state prisoner who challenges fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within literal terms of § 1983; did not create [an] exception to "no exhaustion" rule of § 1983; it merely held that certain claims by...

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[13] See hereinabive FN7, page 14 hereof.

> ...state prisoners are not cognizable under that provision and must be brought in habeas corpus proceedings, which do not contain exhaustion requirement. 42 U.S.C.A § 1983; 28 U.S.C.A. § 2254.
>
> [6] Common-law cause of action for malicious prosecution, unlike related cause of action for false arrest and imprisonment, permits damages for confinement imposed pursuant to legal process.
>
> [7] Successful malicious prosecution plaintiff may recover in addition to general damages, compensation for any arrest or imprisonment, including damages for

discomfort or injury to his health, or loss of time and deprivation of society.

[11] Favorable termination of prior proceedings is not element of abuse of process cause of action.

[12] Gravamen of tort of abuse of process is not wrongfulness of prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends.

[18] If district court determines that § 1983 plaintiff's action, even if successful, will not demonstrate invalidity of any outstanding criminal judgement against plaintiff, action should be allowed to proceed, in absence of some other bar to suit. 42 U.S.C.A. § 1983.

[22] State courts are bound to apply federal rules in determining preclusive effect of federal-court decisions on issues of federal law.

CONCURING OPINION
Justice SOUTER, with whom Justice BLACKMUN, Justice STEVENS, and Justice O'CONNER join, concurring in the judgement.

FN3. Some of the traditional common-law requirements appear to have liberalized over the years, see Prosser and Keeton 882 ("There is a considerable minority view which regards the conviction as creating only a presumption, which may be rebutted by any competent evidence showing that probable cause for the prosecution did not in fact exist"), strengthening the analogy the Court draws. ...[The] **Reconstruction-era common law recognizes a limited exception to the rule denying a malicious prosecution plaintiff benefit of the invalidation of his conviction: an exception for convictions "obtained by some type of fraud."** (emphasis added) Ante, at 2371, n. 4 (citing *Crescent City Live Stock Co. v Butcher's Union Slaughter-House Co.*, 120 U.S. 141, 151, 7 S.Ct. 472, 477, 30 L.Ed. 614 (1887) *Preiser v. Rodriguez*, 411 U.S. 475 93 S.Ct.1827, 36 L.Ed.2d 439 (1973) e.g., Young v. Kenny, 907 F.2d 874, 875-876 (CA9

1990) Preiser, Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Wollf v. McDonnel, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) ante, *498 at 2369-2370.

FN4. ...If...individuals...like state prisoners, were required to show the prior invalidation of their conviction or imprisonment, the result would be to deny any federal forum for claiming deprivation of federal rights to those who cannot first obtain a favorable state ruling. The reason, of course, is that **individuals not "in custody" cannot invoke federal habeas jurisdiction, the only statutory mechanism besides § 1983** by which individuals may sue state officials in federal court for violating federal...

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...rights. That would be an untoward result. ...*501 It is one thing to adopt a rule that forces prison inmates to follow the federal habeas route with claims that fall within the plain language of § 1983 when that is necessary to prevent a requirement of the habeas statute from being undermined. That is what the Court did in *Preiser v. Rodriguez*, 411 U.S., at 489-492, 93 S.Ct., at 1836-1838, and that is what the Court's rule would do for state prisoners. Harmonizing § 1983 and the habeas statute by requiring a state prisoner **2380 seeking damages for unconstitutional conviction to establish the previous invalidation of his conviction does not run afoul of what we have called, repeatedly, "[t]he very purpose of" § 1983: "**to interpose the federal courts between the States and the people, as guardians of the people's federal rights.**" *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); see also Pulliam v. Allen, 466 U.S. 522, 541, 104 S.Ct. 1970, 1980-1981, 80 L.Ed.2d 565 (1984) *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); Patsy v. Board of Regents of Fla., 457 U.S. 496, 503, 102 S.Ct. 2557, 2561,

73 L.Ed.2d 172 (1982). A prisoner caught at the intersection of § 1983 and the habeas statute can still have his court; and, depending on the circumstances, he may be able to obtain § 1983 damages. It would be an entirely different matter, however, to shut off federal courts altogether to claims that fall within the plain language of § 1983. "[I]rrespective of the common law support" for a general rule disfavoring collateral attacks, the Court lacks the authority to do any such thing absent unambiguous congressional direction where, as here, reading § 1983 to exclude claims from federal court would run counter "to § 1983 history" and defeat the statute's "purpose." Wyatt v. Cole, 504 U.S., at 158, 112 S.Ct., at 1828. Consider the case of a former slave framed by Ku Klux Klan-controlled law-enforcement officers and convicted by a Klan-controlled state court of, for example, raping a white woman; and suppose that the unjustly convicted defendant did not (and could not) discover the proof of unconstitutionality until after his *502 release from state custody. If it were correct to say that § 1983 independently requires a person not in custody to establish the prior invalidation of his conviction, it would have been equally right to tell the former slave that he could not seek federal relief even against the law-enforcement officers who framed him unless he first managed to convince the state courts that his conviction was unlawful. That would be a result hard indeed to reconcile either with the purpose of § 1983 or with the origins of what was "popularly known as the Ku Klux Klan Act," *Collins v. Hardyman*, 341 U.S. 651, 657, 71 S.Ct. 937, 939, 95 L.Ed. 1253 (1951), the statute having been enacted in part out of concern that many state courts were "in league with those who were bent upon abrogation of federally protected rights," *Mitchum v. Foster*, supra, 407 U.S., at 240, 92 S.Ct., at 2161; ef. Cong. Globe, 42d Cong., 1st Sess.., 577 (1871)(Sen. Trumbull explaining that, under the Civil Rights Act of 1871, "**the Federal Government has a right to set aside...action of State authorities" that deprives**

person of his Fourteenth Amendment rights"). It would also be a result unjustified by the habeas statute or any other post-§ 1983 enactment. Nor do I see any policy reflected in a congressional enactment that would justify denying to an individual today federal damages...merely because he was unconstitutionally fined by a State, or **to a person who discovers after his release from prison that, for example, state officials withheld** exculpatory material. And absent such a statutory policy, surely the common law can give us no authority to narrow the "broad language" of § 1983, which speaks of deprivations

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of "any" constitutional rights, privileges, or immunities, by "[e]very" person acting under color of state law, and to which "we have given full effect [by] recognizing that § 1983 'provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights.'" *Dennis v. Higgins*, 498 U.S. 439, 443, 445, 111 S.Ct. 865, 869-870, 112 L.Ed.2d 969 (1991)(quoting *Monell v. New York City Dept. of Social Svcs.*, 436 U.S. 658, 700-701, 98 S.Ct. 2018, 2040-2041, 56 L.Ed. 611 (1978). *503 In sum, while the malicious-prosecution analogy provides a useful mechanism for implementing what statutory analysis requires, congressional policy as reflected in enacted statutes must ultimately be the guide. I would thus be clear that the proper resolution **2381 of this case (involving, of course, a state prisoner) is to construe § 1983 in light of the habeas statute and its explicit policy of exhaustion. **I would not cast doubt on the ability of an individual unaffected by the habeas statute to take advantage of the broad reach of § 1983**.

END OF DOCUMENT [Copr. (C) West 2000 West Group. No claim to orig. U.S. govt. works.] (emphasis added)

(iv) ROOKER-FELDMAN [see also, e.g., D.E. #78 at ¶ (2)(B).IV, page 15 thereof, as follows]

> (i) Attached and appended as "Exhibit One" thereto Akers' "RESPONSE AND/OR OBJECTIONS TO [DEFENDANT] BISHOP'S 'MOTION FOR PERMISSION TO FILE AN AMENDED MOTION TO DISMISS' & ACCOMPANYING 'MEMORANDUM IN SUPPORT [THEREOF]'" filed and served on January 22, 2001 [Docket Entry #68], was a complete copy of Rooker, et al., v. Fidelity Trust Co., et al., 263 U.S. 413, 44 S.Ct. 149; and District of Columbia Court of Appeals, et al., v. Marc Feldman and Edward J. Hickey, Jr., 460 U.S. 462, 103 S.Ct. 1303. Again, with all due respect, Akers can see no proper application to the herein case. To whatever extent the herein defendants argue that any such application exists, Akers asserts that any/all similarities are overridden by hereinabove language of *Heck v. Humphrey* in conjunction with Title 18 U.S.C. § 1961, et seq., Title 42 U.S.C. §§ 1983 & 1985, together with the authorities in support thereof as cited in Akers' Complaint and Memorandum.[14]

(v) - (viii) VARIOUS CLAIMS OF IMMUNITIES [see, e.g., D.E. #78, ¶ (2)(B).V, page 15]

(i) Defendant Kelly acknowledges that he is not entitled to any immunities in this action. However, to whatever extent he supports the arguments of any of his co-defendants respecting any such alleged immunities, Akers hereby responds that neither are any of Kelly's co-defendants entitled to immunities inasmuch as they have committed unlawful acts in their private capacities and, then, perpetuated those acts in their official capacities, without "personal" or "subject matter" jurisdiction. [see, e.g., Robichaud v. Roman, C.A. 9 (Ariz.) 1965, 351 F.2d 533, i.e., "Title of...

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[14] Akers would also hasten to add that the herein Defendants conveniently ignore a key element of the Court's ruling in **Rooker, et al., v. Fidelity Trust Co., et al.**, 263 U.S. 413, 44 S.Ct. 149, i.e., "Where constitutional questions actually arose in a cause **in which a state court had jurisdiction of the**

subject-matter and of the parties..." [id., HN228]. In the instant case, **it is clear that the Kentucky Court's had neither**.

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...office, quasi-judicial or even judicial, does not of itself immunize officer from claim of damages under this [Title 42 U.S.C. § 1983] (emphasis added); Henzel v. Gerstein, C.A. 5 (Fla.) 1979, 608 F2d 654, i.e., "The 'absence of jurisdiction' exception to rule that a judge is absolutely immune from civil rights damage liability for acts within his judicial capacity, except when he acts in absence of all jurisdiction, refers to situations in which a judge acts purely in a private capacity" (emphasis added); and Sparks v. Duval County Ranch Co., C.A.5 (Tex.) 1979, 604 F.2d 976, affirmed 101 S.Ct. 183 449 U.S. 24, 66 L.Ed. 2d 185, i.e., "Rule of judicial immunity from damages, with a single bright-line exception, *viz.*, a judge is not protected if he acts in 'clear absence of all jurisdiction', is as broad as, but no broader than, necessary." (emphasis added)

(F)(ix) Irvin asserts that: "Movants herein filed such a motion on December 18, 2000 [D.E. 38] supported by a memorandum of law [D.E. 39] wherein they asserted various defenses including...the one year statute of limitations". **Akers responds that**: **It has long been well-established** that the Sixth Circuit Court of Appeals recognizes the limitation period for filing an action pursuant to the R.I.C.O Act to be **four years after the last known "injury to the Plaintiff's business or property"** (in most other Circuits, that period is recognized to be five years). **In every Federal Circuit**, the limitation period for filing an action pursuant to Title 42 U.S.C. § 1985 has always been "well-established" to be **two years** following the last "overt act" in furtherance of the alleged conspiracy. The limitation period for filing an action pursuant to Title 42 U.S.C. § 1983, likened to a tort for malicious prosecution, has **as well been consistently held to be two years**. Even a "cursory" review of the facts of this case reveals it was initiated

well within applicable statutes of limitations. Akers hereby challenges Kentucky Assistant Attorney General D. Brent Irvin **to cite any authority, whatsoever,** to support his assertion of a "**one year statute of limitations**".

(F)(x) Irvin asserts that: "Any of these defenses are sufficient to defeat all of Akers claims against movants." **Akers responds that**: that would be true if "any of these defense" were legitimate. However, **every one** is either "**frivolous**" and/or "**fraudulent**".

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(F)(xi) Irvin asserts that: "The *Heck* doctrine, *res judicata*, absolute witness immunity and statute of limitations defenses should bar his claims against the remaining defendants who may not be state actors." **In response, Akers re-states and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(F)(iii) & 2(F)(iv) [pages 18 - 22 hereof], ¶ 2(F)(ix) [page 21-22 hereof], and ¶ 2(F)(ix) [page 22 hereof]. With respect to any alleged "absolute witness immunity", **Akers' response** is the same as it was every other time any of the Defendants-Respondents have attempted to assert this outrageous defense [see, e.g., Case No. 3:00cv1142, D.E. #75, pages 21 -23 thereof], i.e.,

VARIOUS CLAIMS OF IMMUNITIES

It is preposterous for the herein defendants to assert that the Eleventh Amendment (or any other provision) to the United States Constitution was ever intended to afford immunities for criminal acts or, indeed, **any other act** in direct violation or contravention thereof. Moreover, it is Akers' position that the fraudulent extradition and/or kidnapping of Akers from his home State of Tennessee effected a "constructive waiver" of sovereign immunities;[15] that the lack of "subject matter" and "personal" jurisdiction in so doing

constituted an "absolute waiver" of sovereign immunities;[16] that representation of any of the herein defendants by the Attorney General's Office of the Commonwealth of Kentucky constitutes an "intentional and actual waiver" of sovereign immunities; and that the obvious elements of "fraud", "conspiracy", and "malice", ***inter alia***, pervasive within the activities of the remaining defendants invalidates any claims of immunities by them. **A representative analogy would be**:

> Parties B through Z conspire to and, in fact, carry out the criminal act of robbing Victim A. An integral part of the conspiracy of Parties B through Z is an agreement that, in order to prevent Victim A from filing criminal charges against them, Parties B through Z will devise, implement, and effectuate fraudulent criminal charges **against Victim A** so that; when Parties B through Z are called to and, in fact, do testify against Victim A in his criminal trial, Parties B through Z (who are the actual criminals in the overall matter) acquire immunities from their testimony against Victim A; then assert a defense of "qualified immunity" against...

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[15] See Akers' Complaint at ¶¶ 56 through 68, & ¶¶ 70 through 79; and parallel ¶¶ E-56 through E-68 together with footnotes **66** through **71** thereto, E-70 thru E-79 together with footnotes **72** through **75** thereto of accompanying Memorandum; **and hereinabove FN8**.

[16] See Akers' Memorandum at ¶ 81 together with footnotes **81** & **82** thereto; **and hereinabove FN8**.

> ...prosecution for "conspiracy" against and "robbery" of Victim A.[17]

Surely, the common law permits no such immunities for Parties B thru Z.

(G) Irvin asserts that: "It is anticipated that most of the defendants will waive their rights to file briefs in opposition to [Akers'] petition for writ of certiorari, given that the law is settled and further briefing is not necessary." **Akers responds that** the simple truth of the matter is that **these Defendants-Respondents cannot** "file briefs in opposition to [Akers'] petition for writ of certiorari" inasmuch as **they cannot present even a single meritorious argument or authority in support thereof** just like they could not file any meritorious "Brief for Appellee[s]" within the Sixth Circuit Court of appeals and **cannot controvert even a single averment** within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

(H)(i) Irvin argues that: "This case is ripe for consideration of the jurisdictional... defenses previously asserted in the United States District Court for the Middle District of Tennessee." **In response, Akers re-states and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(A)(i)(I) & 2(A)(i)(II) [pages 4 - 8 hereof].

(H)(ii) Irvin argues that: "This case is ripe for consideration of the...immunity defenses previously asserted in the United States District Court for the Middle District of Tennessee." **In response, Akers re-states and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(F)(v) - (viii); & 2(F)(xi) [pages 21 - 24 hereof].

(I)(i) Irvin argues that: "A prompt ruling on these threshold jurisdictional and immunity issues will promote judicial economy". **In response, Akers again re-states**...

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[17] **See hereinabove FN1**, page 5 hereof.

...**and reiterates** his "**responses**" and/or "**objections**" within hereinabove ¶¶ 2(F)(v) - (viii); & 2(F)(xi) [pages 21 - 24 hereof] but would also, **again, point out** that Kentucky's Assistant Attorney General D. Brent Irvin is now attempting to usurp the appellate function of the **United States Supreme Court** in like manner to that in which those Defendants-Respondents he purports to represent have heretofore **consistently usurped the Constitution and Laws of the United States of America as well as those of the State of Tennessee and their very own Commonwealth of Kentucky**

(I)(ii) Irvin argues that: "A prompt ruling on these threshold jurisdictional and immunity issues will ...avoid requiring Akers and his witnesses to travel to Kentucky where he fears such travel expenses will cause 'all of his resources [being] depleted'". **Akers responds that**: Irvin still doesn't seem to get the picture here. **Akers "resources" were depleted long ago by these Defendants** - to the tune of **in excess of ONE MILLION, EIGHTY THOUSAND DOLLARS ($1,080,000.00)**. The only questions yet remaining is the amount/nature of additional damages they will inflict upon Akers' person, property, and businesses as the proximate result of their violations of Title 18 U.S.C. § 1964(c); and Title 42 U.S.C. §§ 1983 &1985(3) together with Akers' resulting litigation costs.

(I)(iii) Irvin argues that: "A prompt ruling on these threshold jurisdictional and immunity issues will ...should also alleviate Akers fear that if he returns to Kentucky he will be subjected to additional criminal charges if he violates the 'yet outstanding and unconstitutional Domestic Violence Order." **Akers responds** that he has **never had any concern, whatsoever**, that he would **knowingly** or **intentionally** violate the "yet outstanding and unconstitutional Domestic Violence Order". His concern with respect

thereto is that he will again be **fraudulently** and/or **maliciously accused** of doing so.

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(J)(i) Irvin argues that: "Given the frivolous nature of Akers' Complaint, a quick disposition of this case is in the public interest." **In response**, Akers herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(I)(i) and hereinafter ¶ 2(J)(iii).

(J)(ii) Irvin argues that: "Crime victims and witnesses in criminal proceedings should not be subjected to further harassment by the likes of Akers, who attempts to collaterally attack his conviction while simultaneously pursuing a frivolous civil rights/ RICO Complaint that obviously violates Federal Civil Rule 11." **In response**, Akers again re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(I)(i) and hereinafter ¶ 2(J)(iii) and would **totally agree** that "Crime victims and witnesses in criminal proceedings should not be subjected to further harassment..." **insofar as they have been forthright in doing so and not**, in the process, violated virtually **every principle** of Constitutional law, Statutory law, Common law, & law in equity **as well as** virtually every applicable Rule of Court **as these Defendants-Respondents have done**.

(J)(iii) Irvin argues that: "Akers is not an attorney, but he should have known that his case was frivolous based on Judge Wilhoit's dismissal of his prior federal case." **In response**, Akers re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(C)(ii). Additionally, although not an attorney, Akers certainly understands the meaning of the term "**without prejudice**" and, apparently, Irvin either **does not** or, simply, chooses to ignore it. In either case, that term is defined as follows:

> "**Dismissal without prejudice**. Term meaning dismissal without prejudice to the right of the complainant to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to a subsequent suit." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998]

(K)(i) Irvin argues that: "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims will promote judicial economy". **In response**, Akers again herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(I)(i) & 2(J)(iii).

(K)(ii) Irvin argues that: "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims will...promote the underlying policies behind judicial, quasi-judicial, and qualified immunities". **In response**, Akers again herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(I)(i) & 2(J)(iii) as well as hereinabove ¶¶ 2(F)(v) - (viii) [page 21 - 22 hereof; & ¶ 2(F)(xi) [page 23 hereof]

(K)(iii) Irvin argues that: "In short, consideration of all the previously filed motions to dismiss for lack of jurisdiction or failure to state valid claims...should soothe Akers' fears as to the parade of horribles he may be subjected to if he physically returns to Kentucky." **Akers responds that** the **very same band - comprised of the very same cast of characters** except for sporadic intermingling of "new recruits" - **has already passed at least three times in the "parade of horribles"** to which Irvin alludes. **The only questions yet remaining are**: in the event Akers be yet again found in attendance - whether it be voluntarily or otherwise - will that same

band parade by a fourth time; who will comprise its cast of characters next; and what ghoulish instruments it will wield next. **There is no manner in which Akers can now be "soothed"** sufficiently to return to the Commonwealth of Kentucky short of commensurate redress - **including removal of Irvin and those Defendants-Respondents who he purports to represent from all positions of authority**.

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(K)(iv) Irvin argues that: "A prompt review of the tendered motions and memoranda and (sic) will expedite the resolution of this action for all concerned". **In response**, Akers again herein re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶ 2(I)(i) [Page 25 hereof].

(K)(v) Irvin argues that: "A prompt review of the tendered motions and memoranda and (sic) will expedite the resolution of this action for all concerned - **especially the innocent victim** of the domestic violence he inflicted, **and all those who gave moral support** to resist Akers' abuse." **In response**, Akers re-states and reiterates his "responses" and/or "objections" contained in hereinabove ¶ 2(C)(ii) [Page 10 hereof]; ¶ 2(D)(i) & (ii) [Page 11 - 14 hereof]; and ¶ 2(J)(ii) [Page 26 hereof].

(L) Irvin further asserts that: "In further support of this motion, movants herein adopt and incorporate by reference as if fully set forth herein their memoranda of law filed in support of their motion to dismiss when the case was filed in the United States District Court for the Middle District of Tennessee." **In response**, Akers hereby incorporates by reference, the same as if fully set forth herein in their entirety, all of his pleadings as filed within United States District Court for the Middle Tennessee District-Nashville Division; United States Court of Appeals- Sixth Circuit; and Supreme Court of the United States.

(M)(i) Irvin then pleads: "WHEREFORE, defendants ...Overstreet, ...Clark, ...Goodwine, ...Red Corn, ...Schwartz, and...Ferguson respectfully request that this Court enter an order dismissing them from this action based on the principles announced by the Supreme Court in *Heck v. Humphry* **[see Akers' response, hereinabove ¶ 2(F)(iii)]** or that these defendants should be dismissed on the *Rooker-Feldman* doctrine **[see Akers' response, hereinabove...**

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...¶ 2(F)(iv)] or *res judicata* **[see Akers' response, hereinabove ¶ 2(F)(i)]**; or that they be dismissed on their respective absolute immunities and prosecutorial immunities from suit, or their qualified immunities from suit; or as barred by the one year statute of limitations." **In response**, Akers hereby re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(F)(iii), 2(F)(iv), 2(F)(i), 2(F)(v), 2(F)(vii), 2(F)(viii), and 2(F)(ix), respectively.

(M)(ii) **Finally, Irvin has the further audacity to plead**: "In order to avoid piecemeal appeals, defendants urge this Court to *sua sponte* dismiss Akers' Complaint against all the remaining defendants [18] based on all the defenses they asserted before when this case was before the U.S. District Court for the Middle District of Tennessee including *res judicata* and the *Heck* doctrine. **Again**, Akers re-states and reiterates his "responses" and/or "objections" contained within hereinabove ¶¶ 2(F)(i), and 2(F)(iii), respectively.

CONCLUSION

Quite frankly, Akers has grown extremely weary of responding to the ludicrous pleadings of Kentucky's Assistant Attorney General D. Brent Irvin. His latest hereinabove "MOTION FOR JUDGEMENT ON THE PLEADINGS" is **no less "frivolous"** and/or "**fraudulent**" than all his preceding ones

and has gone **far beyond** **his previous purposes of "confusion and delay"**.

It is obvious that Irvin either: (1) is substantially ignorant of the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky; (2) possesses a total disdain for the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky; (3) believes...

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[18] This is **at least the third** instance (in **three separate** Federal Courts) in which Kentucky Asst. Attorney General D. Brent Irvin has attempted to fraudulently usurp representation of other Defendants-Respondents in this civil action. [see EXHIBIT "IIII" & "JJJJ" attached and appended hereto and, thereby, entered into the record herein]

...that he and those Defendants-Respondents he purports to represent are superordinate to the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky; **or** (4) is just as corrupt as those Defendants-Respondents he purports to represent. It is difficult to imagine any other explanation for his pleadings in this case.

Regardless, the effect of Irvin's herein pleadings have been to hinder, **if not to deprive**, Akers of his rights secured by, ***inter alia***, the First Amendment to the United Stated Constitution.

WHEREFORE, Plaintiff-Petitioner, James G. Akers, **without counsel**, must respectfully ask and pray of this Honorable Court to "**STRIKE**" the hereinabove "MOTION FOR JUDGEMENT ON THE PLEADINGS" and to "**ORDER**" the within case to be held in abeyance pending determination of the issue of proper venue by the United States Supreme Court.

Additionally, Akers must respectfully ask the Court to consider imposition of appropriate sanctions upon Kentucky Assistant Attorney General D. Brent Irvin pursuant to F.R.C.P.11(c) inasmuch as his "MOTION" as filed herein on

April 29, 2002, is: (A) **clearly insufficient on its face** pursuant to F.R.C.P. 8(d), 8(e)(2), & 8(f); (B) **clearly fraudulent** pursuant to F.R.C.P. 9(b)(1), (2), (3), & (4); and (C) **clearly redundant, impertinent, [and] scandalous** pursuant to F.R.C.P. 11(b) & 12(f).

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

APPENDIX

(Index only included with Petition for Writ of Certiorari)

INDEX OF EXHIBITS

Exhibit	Description:	Page Number: Apndx/Cumul
"IIII"	"NOTICE" by D. Brent Irvin, Assistant Attorney General for the Commonwealth of Kentucky, as served (but not entered) in U. S. District Court for Middle Tennessee District, at Nashville, on 02/02/01	1 / 33
"JJJJ"	"MOTION OF STATE APPELLEES TO DISMISS APPEAL FOR LACK OF JURISDICTION" as served in United States Court of Appeals for the Sixth Circuit, on November 1, 2001	2 / 34

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Petitioner, v. CAROLYN P. BISHOP, et al, Defendants-Respondents.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff- Petitioner James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**MOTION TO STRIKE; and MOTION TO STAY PROCEEDINGS PENDING DETERMINATION OF 'VENUE' BY UNITED STATES SUPREME COURT**", together with the accompanying "**MEMORANDUM & MEMORANDUM OF LAW**", via "**UNITED STATES MAIL-FIRST CLASS**", upon each and every Defendant-Respondent named therein or their respective legal counsel as follows: [Listing of served Parties and/or their respective Counsel-of-Record omitted. **See official record for listings.**]

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o POST OFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 9th day of May, 2002, has acknowledged the foregoing, and has subscribed her signature thereto in my presence.

s/Lindsey M. Jesperson
NOTARY PUBLIC, Tennessee-at-large
My Commission Expires: 09/25/04

[END OF DOCUMENT]

No. 01-1619

IN THE

Supreme Court of the United States

JAMES G. AKERS,

Petitioner,

v.

CAROLYN P. BISHOP, *et al.*

On Petition For Writ of Certiorari
To The United States District Court For The
Middle Tennessee District-Nashville Division

PETITION FOR WRIT OF CERTIORARI

James G. Akers, *Petitioner*
4708 Trousdale Drive
Nashville, Tennessee 37220
Telephone: 615/834-2843

THE PETITIONER, James G. Akers, without counsel, seeks a writ of certiorari from this Honorable Supreme Court of the United States of America – thereby remanding Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle Tennessee District-Nashville Division, on November 21, 2000 [Case No. 3:00cv1142] back to that Court with instructions that venue shall remain therein, for full adjudication of all matters with respect thereto, for those reasons hereinafter set forth. Alternatively, and in a separate action, Akers will seek a writ of mandamus directing the United States Court of Appeals for the Sixth Circuit to recognize and accept jurisdiction of Akers' appeal docketed in that Court [Case No. 01-6243] on October 16, 2001, pursuant to the "Collateral Order Doctrine" set forth in, e.g., *Armstrong v. McAlpin*, 625 F.2d 433, C.A.N.Y. (1980), citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) in conjunction with TITLE 28 U.S.C. § 1292(a)(1); or a writ of prohibition precluding further hindrance of Akers' prosecution of the herein claims. There remains no other tribunal in which to obtain the relief sought herein.

QUESTIONS PRESENTED FOR REVIEW

(I) Whether venue properly lies with the United States District Court for Middle Tennessee District-Nashville Division;

(II) Whether the "ORDER" transferring venue to Eastern District of Kentucky, at Lexington, is "collateral to the merits" of the case;

(III) Whether transfer of the case to United States District of Kentucky, at Lexington, will result in irreparable damage to Akers;

(IV) Whether the issues respecting transfer of case to the Eastern District of Kentucky, at Lexington, are "too important to be deferred until the whole case is adjudicated"; &

(V) Whether "ends of justice" require venue to remain in United States District Court for the Middle Tennessee District-Nashville Division.

PARTIES TO THE PROCEEDING

PLAINTIFF-PETITIONER:

(a) James G. Akers, *pro se*
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Brentwood, Tennessee 37024-3648
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DEFENDANTS-RESPONDENTS:

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(b) Doris Fleming;
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(j) Thomas L. Clark;
(o) Lou A. Red Corn;
(r) Rebecca M.. Overstreet;
(s) Cindy G. Schwartz;
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(l) FCS Does 1 through 30 [known only as that group of "persons" at the Office of the Fayette County (Kentucky) Sheriff, Lexington, Kentucky, and, as yet, unidentified pursuant to discovery herein];

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[1] The Commonwealth of Kentucky **has not been named as a party hereto.**

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(p) FCC Does 1 through 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky, and as of yet unidentified];

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[2] The L.F.U.C.G. has not yet been named as a party to this action but will be added by "Amended Complaint" as the result of its voluntary entry herein.

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[1] Title 42 U.S.C. § 1988(a) is quoted within "ARGUMENT I", page 22 hereof. All remaining "CONSTITUTIONAL PROVISIONS & STATUTES" cited are quoted in Akers' Memorandum ["EXHIBIT USSC-11" hereto, at pages 5-19].

INTRODUCTION

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), without counsel, and in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)", [D.E. #1] together with Akers' extensive and contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" ["EXHIBIT USSC-11" hereto] and contemporaneously-filed "APPENDIX/RELEVANT EXHIBITS" (hereinafter "Akers Complaint"; "Akers' Memorandum"; & "Akers' Appendix", respectively) in the United States District Court for the Middle Tennessee District-Nashville Division. Jurisdiction was asserted pursuant to provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing acts" as alleged in Akers' Complaint had taken place within the Federal District of Middle Tennessee District-Nashville Division. "Diversity of citizenship" of the parties, at most, a secondary consideration.

The factual allegations within Akers' Complaint, when coupled with applicable Constitutional, Statutory, and Common Laws of the United States of America and those "authorities" in support thereof as cited in Akers' Memorandum, will speak for themselves. **Not even a single Defendant has attempted to controvert even a single averment** and, in fact, **they can not do so without placing themselves in peril of yet further sanctions and/or penalties under Federal Law**. The "merits" of Akers' herein case are not even arguable.

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for United States District for the Middle Tennessee District-Nashville Division, entered his "ORDER" denying the Defendants'-Respondents various "MOTION[S] TO DISMISS" but granting transfer of the case to United States District Court for the Eastern District of Kentucky, at Lexington ["EXHIBIT USSC-09" hereto].[2]

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[2] See hereunto relevant excerpts therefrom quoted within Akers' hereinafter "ARGUMENT(S) I through V" & "CONCLUSION", pages 21-30 hereof.

It is apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) accepted the Defendants'-Respondents' fraudulent renditions of the facts with respect thereto; and/or (5) based Its ruling on a combination of "all the above".

This "Petition for Writ of Certiorari" follows the Sixth Circuit Court of Appeals' denial of Akers' appeal pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in, e.g., **Cohen v. Beneficial Loan Corp.**, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949), in which the United States Supreme Court held that "...certain orders were immediately appealable (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until whole case is adjudicated."[3]

JURISDICTION (U. S. DISTRICT COURT)

United States District for the Middle Tennessee District-Nashville Division, had both jurisdiction and venue pursuant to the provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3).

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[3] See also: **Clemence v. Clemence**, 8 Kan.App.2d 377, 658 P.2d 368 (1983), i.e., "'Collateral order' doctrine allows appeal from interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; such order is, for purposes of appellate jurisdiction, 'final order'" (emphasis added); **Firestone Tire & Rubber Co. v. Risjord**, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981), i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine." (emphasis added); **Abney v. United States**, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977) at FN4, i.e., "Of course, Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings." (emphasis added)

JURISDICTION (U. S. COURT OF APPEALS)

The United States Court of Appeals for the Sixth Circuit had jurisdiction to hear and adjudicate Akers' therein appeal, and to consider all matters with respect thereto, pursuant to the "Collateral Order Doctrine" as set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) in conjunction with TITLE 28 U.S.C. § 1292(a)(1), but disclaimed Its jurisdiction pursuant to the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984), on January 24, 2002 ["EXHIBIT USSC-06"].

JURISDICTION (U. S. SUPREME COURT)

The civil case from which the within "Petition for Writ of Certiorari" arises involves violations of Federal Law – some of which originated in Kentucky resulting in violations within Tennessee and, conversely, some originating in Tennessee and resulting in violations within Kentucky. Neither the State or Federal Courts within the states of Tennessee or Kentucky have both personal jurisdiction over all the parties and subject matter jurisdiction over all the issues.

Therefore, the Federal Courts have exclusive jurisdiction to hear and adjudicate this case pursuant to provisions of TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3); and this Honorable Supreme Court of the United States of America has exclusive jurisdiction to hear and adjudicate the within "Petition for Writ of Certiorari", and consider all matters with respect thereto, pursuant to ARTICLE III-§ 2 of the United States Constitution inasmuch as the U. S. Court of Appeals for the Sixth Circuit has already disclaimed jurisdiction in Its "OPINION" and "ORDER" entered January 24, 2002 [*id.*]. There is no other tribunal in which to obtain the relief requested herein.

STATEMENT OF THE CASE *SUB JUDICE*

The following are edited excerpts [4] from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00-1142] as filed on November 21, 2000, in United States District Court for the Middle Tennessee District-Nashville Division.

COUNT ONE - CONSPIRACY

In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual "persons" and/or "public officials" within the Lexington-Fayette Urban County Government, "associated-in-fact") jointly devised, implemented, and effectuated a "conspiracy" in violation of TITLE 42 U.S.C. § 1985(2) & (3), *inter alia*, to unlawfully deprive that "class of persons" which included Plaintiff Akers of rights, privileges, and/or immunities secured by, *inter alia*, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution in that manner set forth in...¶¶E-12 and corresponding FN41 thereto of Akers' Memorandum; and which said "conspiracy" ultimately resulted in a "chain conspiracy" in furtherance thereof as detailed in hereinafter "COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO"; and which "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and which "conspiracy", "chain conspiracies", "overt acts", and "unlawful imprisonment" ultimately resulted in injuries to Akers in his person and property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT TWO - CHAIN CONSPIRACY

At some time shortly following August 25, 1993, in Fayette County, Kentucky, herein Defendants Bishop, Fleming,

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[4] **Edited for clerical errors only** and for format required by U.S .S.Ct. Rule 33.

Rushing, and CBT Does 1 thru 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., and herein "associated-in-fact"), jointly devised a "chain conspiracy" in violation of TITLE 18 U.S.C. § 1985(2) & (3), *inter alia*, in the furtherance of that "conspiracy" detailed in hereinabove "Count One", to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, *inter alia*, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in...¶¶E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and property as are detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT THREE - CHAIN CONSPIRACY

On, or about, April 8, 1994, in Fayette County and/or Jessamine County, Kentucky, Defendants Layne and Shannon joined in the furtherance of that "chain conspiracy" as detailed in hereinabove "COUNT TWO" by committing specific "overt acts" in the furtherance thereof and in that manner set forth in...¶¶E-24 through E-27, E-29, E-31(a), E-31(b), E-31(c), E-34, E-38, E-40, E-43, E-44, & E-50(e) together and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN", respectively; the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof; and injuries to Akers in his person, property, and businesses as detailed within hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof, respectively.

COUNT FOUR - CHAIN CONSPIRACY

On, or about, June 16, 1994, in Fayette County, Kentucky, and/or Jessamine County, Kentucky, the Defendants Vaughan, Kelly, and SCC Does 1 through 50 (known only as that group of individual "persons" at the Southland Church of Lexington, Inc., and "associated-in-fact") joined in the furtherance of that "chain conspiracy" as outlined in hereinabove "COUNTS TWO & THREE" by committing specific acts in furtherance thereof in that manner as set forth in...¶¶E-41, E-42, E-46, E-48, & E-50 together with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, October 28, 1994, in Fayette County and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Rushing, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove "COUNTS TWO through FOUR", with the intent to deprive Plaintiff Akers of his rights, privileges, and immunities secured by, *inter alia*, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, *inter alia*, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific "overt acts" in furtherance thereof and in the manner as set forth in...¶¶E-51, E-54, E-56 through E-58, & E-61 through E-68 and all

footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and those injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SIX - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Witt and FCS Does 1 through 30 (known only as a group of "persons" at the Fayette County Sheriff's office and "associated-in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in hereinabove "COUNT FOUR" by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SEVEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Clark, LFG Does 1 through 60 (known only as that group of "persons" at the Lexington-Fayette Urban County Government, "associated-in-fact"), and CAO Does 1 through 20 (known only as that group of "persons" at the Office of the Commonwealth's Attorney for the Twenty-second Judicial District of Kentucky, "associated-in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in "COUNTS FOUR through SIX" hereinabove by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 together with all footnotes thereto, respectively, of Akers' Memorandum; and

which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT EIGHT - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Red Corn joined in the "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and the aforesaid "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE, SIX, and SEVEN" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-82, E-83, E-84, E-85, E-86.I through E-86.X, E-89, E-90(a), E-90(b), E-90(d), E-92, E-94, & E-96 together with all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof.

COUNT NINE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, the herein Defendant Overstreet joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and that "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE through EIGHT" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-81, E-82, E-84, E-86.I through E-86.X, E-87, & E-88 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereinafter and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT TEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 5, 1997, in Franklin and/or Fayette County, Kentucky, Defendant Schwartz joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and "collective and concerted common scheme and purpose" detailed in hereinabove "COUNTS through EIGHT" by committing specific "overt acts" in the furtherance of those "conspiracies" and "overt acts" in furtherance thereof in that manner set forth in...¶¶E-91 & E-93 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" further contributed to the "unlawful imprisonment" of Akers and injuries to Akers in his person and in his property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

As the proximate result of those "conspiracies" and "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", Akers was unlawfully imprisoned an aggregate of SEVEN HUNDRED TWENTY-EIGHT (728) DAYS in custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner detailed in...¶¶122(b), 125, & 126 of Akers Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT TWELVE - CHAIN CONSPIRACY/COVER-UP

Beginning on, or about, February 27, 1998, and, then, continuing through July 7, 2000, in Fayette County, Jessamine County, and/or Franklin County, Kentucky, Defendants Bishop, Fleming, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, SCC Does 1 through 50 (known only as a group of "persons" at Southland Church of Lexington, Inc., and "associated-in-fact"), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of

conduct in the furtherance of those "conspiracies" and/or "chain conspiracies" as detailed hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", by committing additional "overt acts" in furtherance and covert concealment thereof as detailed in...¶¶E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "overt acts" resulted in the further "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and those further injuries to Akers in his person and his property detailed in hereinafter "COUNTS TWENTY-FIVE & TWENTY-SIX", all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT THIRTEEN - FURTHER OVERTACTS/COVER-UP

At some time after October 28, [1998], in Fayette County, Kentucky, FCC Does 1 through 10 (known only as a group of "persons" at the Office of the Fayette [Kentucky] County Court Clerk, and "associated- in-fact") joined in that "further chain conspiracy" as detailed in hereinabove 'COUNT TWELVE' by engaging in an intentional and continuing course of conduct in furtherance thereof by committing additional "overt acts" in the furtherance and covert concealment thereof by fraudulently redacting that portion of the "official state court record" as detailed in...¶¶E-110.V(k) of Akers Memorandum, thereby contributing to "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and further injuries to Akers in his person and property as detailed in hereinafter 'COUNTS TWENTY-FIVE & TWENTY-SIX', in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT FOURTEEN - UNLAWFUL MPRISONMENT

As the proximate result of those "conspiracies" & "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR"; and "overt acts" in the furtherance thereof as detailed in hereinabove "COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE", Akers was again "unlawfully imprisoned" in an aggregate of SIX HUNDRED SEVEN (607) DAYS in custody of

the Fayette County [Kentucky] Sheriff and, subsequently, the Kentucky Department of Corrections, and thereby still further injured in his person and his property in that manner as detailed in ¶¶122(b), 125, & 126 of Akers' Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, *inter alia*.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), collectively and in concert each with another, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in subparagraphs (a) through (d) hereinafter; and used income derived therefrom to acquire, maintain interests in, and/or participate in the conduct of the affairs of the "enterprises" known as Southland Christian Church of Lexington, Inc., and "Association-in-fact" (comprised of all the hereinabove "persons" named as "Defendants" herein, both jointly and severally, and "associated-in-fact") through a "pattern of racketeering activity"; the "activities" of which said "enterprises" having and maintaining affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific said "predicate acts" are as follows:

> (a) On or about May 12, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at Southland Christian Church of Lexington, Inc., and herein "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of "kidnaping" (in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130) in preparation for the hereinafter predicate acts depicted "COUNT FIFTEEN(b) & (c)" in that manner as set forth in...¶¶E-31, E-32, E-34, & E-38 together with all corresponding footnotes thereto,

respectively, of Akers' Memorandum; and which such "predicate act" ultimately resulted in injuries to Akers in his businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum;

(b) From about May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, Jessamine County, Kentucky, and/or Centre City, Minnesota, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., herein "associated-in-fact"), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as hereinafter "COUNT FIFTEEN(c)", and with common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the predicate act of "unlawful imprisonment" of Akers (in violation of K.R.S. 509.020 and, therefore, as well in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner detailed in...¶¶E-31, E-32, E-34, & E-38 with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in injuries to Akers in his person, businesses, and property further detailed in...¶¶125 & 127 of Akers' Memorandum;

(c) On, or about, June 28, 1994, in Fayette and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), acting collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the additional predicate act of "theft by unlawful taking or disposition" of certain property of Akers and Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00 (in violation of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner as is set forth in...¶E-43 together with FN55 & FN56 thereto, respectively, of Akers' Memorandum; and which said "predicate act" ultimately resulted in injuries to Akers in his businesses

and property as are detailed in...¶¶125 & 127 of Akers' Memorandum; &

(d) On or about June 28, 1994, in Fayette County, Kentucky, and Jessamine County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in, the further predicate act of "tampering with physical evidence" (in violation of Title 18 U.S.C. § 1512 & K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner set forth in...¶E-43 together with corresponding FN55 & FN56, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in those injuries to Akers in his person, property, and businesses as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Vaughan, acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in and, thereby, committed those two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter; used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the "enterprises" known as "Dr. John J. Vaughan, M. D.", and the "Association-in-fact" (comprised of all those hereinabove "persons" named as "Defendants" herein, both jointly and severally, corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of those said "enterprises" having maintained affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto, all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and Vaughan, proceeding in concert each with the other, with common scheme and purpose, devised, effectuated, implemented, or otherwise participated in, commission of the predicate acts of "wire fraud" (in violation of Title 18 U.S.C. § 1341) and "mail fraud" (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in...¶¶E-2, E-8, E-28, E-35, E-36, E-41, E-42, E-48, & E-48 together with all corresponding footnotes thereto, respectively, of Memorandum; and which such "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Kelly, collectively and in concert each with the other, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a); in attempt to derive funds therefrom for use in acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as "Defendants" herein, both jointly and severally, both corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which said "enterprises" having had and maintained affects on "interstate and foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and/or Kelly, collectively and in concert each with another, with common scheme and purpose, devised, effectuated, or otherwise participated in the commission of "forgery in the second degree" (in violation of K.R.S. 516.030), and

"theft by extortion" (in violation of K.R.S. 514.040), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-50 together with FN62 of Akers' Memorandum; and which said "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 Akers' Memorandum.

COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop & Rushing, acting in concert each with another, with a common scheme and purpose, devised and/or effectuated and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter, in an overt attempt to use income derived therefrom in the acquisition of, maintaining interests in, and/or otherwise participating in conduct of the affairs of the "enterprise" known only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, jointly and severally, and "associated-in-fact") through a "pattern" of "racketeering activity"; the "activities" of which said "enterprise" both having and maintaining affects on "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, Defendants Bishop and Rushing, acting in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in commission of the two and distinctly separate "predicate acts" of "blackmail" (in violation of Title 18 U.S.C. § 873); and "extortion" (in violation of Title 18 U.S.C. § 875), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶E-56 and FN67 of Akers' Memorandum; and which "predicate acts" resulted in injuries to Akers' businesses and property as detailed in ...¶¶125 & 127 of Akers' Memorandum.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through EIGHTEEN', the Defendant Red Corn joined in those "chain conspiracies", "conspiracies', and "overt acts" in the furtherance and concealment thereof, on, or about, November 1, 1995, in Fayette County, Kentucky and/or Jessamine County, Kentucky; and acting both independently and in concert with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in hereinafter subparagraph (a) through (d); having derived funds therefrom and attempting to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known herein only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, as herein "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of which having affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

> (a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully assisted, influenced, and/or directed Defendant Bishop in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-81 & E-82 with FN81 & FN82 thereto, respectively, of Akers' Memorandum; and which "predicate acts" ultimately

resulted in injuries to Akers in his businesses and in his as detailed in...¶¶ 125 & 127 of Akers' Memorandum;

(b) In about mid-May, 1995, in Fayette County, Kentucky, via telephonic communications to Pulaski County, Kentucky, the Defendant Red Corn committed the "predicate act" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512), thereby violating provisions of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner as set forth in...¶E-86.I(a) and FN85 thereto of Akers' Memorandum; and which said "predicate act" further resulted in injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(c) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII and FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property detailed in...¶127 of Akers' Memorandum; &

(d) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in the manners set forth in...¶¶E-110.III through E-110.VII, E-110.IX, & E-110.X together with N106 through FN126 thereto, respectively, of Akers' Memorandum; and which such additional "predicate acts" resulted in injuries to Akers' businesses and his property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through

EIGHTEEN', the Defendant Overstreet joined in those "chain conspiracies', "conspiracies", and "overt acts" in the furtherance and concealment thereof on, or about, November 10, 1995, in Fayette County and/or Jessamine County, Kentucky, and acting both independently and in concert/consortium with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity", as are enumerated in hereinafter subparagraphs (a) & (b); and, having derived funds therefrom in covert attempt to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, and herein "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which "enterprise" maintaining affects on "interstate commerce" and/or "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

> (a) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Overstreet committed two or more of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII with FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &
>
> (b) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Overstreet committed two or more "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C.

§§ 1961 & 1962, in the manners set forth in...¶¶E-110.III thru E-110.VII, E-110.IX, & E-110.X together with FN106 through FN126, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and/or property as detailed in...¶127of Akers' Memorandum.

COUNT TWENTY-ONE - R.I.C.O. VIOLATIONS

On, or about, September 2, 1998, in Fayette County, Kentucky, and/or Williamson County, Tennessee, and/or via telephonic communications there between, Defendants Red Corn, Overstreet, and Williams, acting both independently and in consortium each with another, engaged in an intentional course of conduct directed at Akers, with common scheme and/or purpose, participated in and, thereby, committed two or more of the "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a) through (c); having derived funds therefrom, and attempting to derive additional funds therefrom, for use in the acquisition of and/or maintaining interests in, or otherwise participating in conduct of the affairs of the "enterprises" known as "Ernest W. Williams, Attorney-at-law" and the "Association-in-fact" (comprised of all those hereinabove "persons" named as Defendants herein, both jointly and severally, "associated-in-fact") through a "pattern" of such "racketeering activity"; the "activities" of each of the such "enterprises" having and maintaining affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and each such "predicate act" depicted as "COUNT TWENTY-ONE(a), (b), & (c)" hereof being violations of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated hereinafter as follows:

(a) "Blackmail" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 873, *inter alia*, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 and FN106 thereto of Akers' Memorandum ; and which "predicate act" further enhanced injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(b) "Extortion" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 875, *inter alia*, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 together with FN106 thereto of Akers' Memorandum; and which "predicate act" further enhanced injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &

(c) "Civil rights intimidation" (in violation of Tennessee Code Annotated 39-17-309 and, therefore, in violation of TITLE 18 U.S.C. §§ 1961 & 1962) in that manner as set forth in...¶¶E-106 & E-107 together with corresponding FN106 of Akers' Memorandum; and which such "predicate act" further enhanced injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP

On, or about, March 30, 2000, in Fayette County, Kentucky, the Defendants Bishop, Fleming, Layne, and Witt continued in those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS TWO, THREE, & FOUR"; and "overt acts" in the furtherance and concealment thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; and in the concealment of those "R.I.C.O. Violations" as detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", by conspiring to, participating in, and/or otherwise effectuating schemes to further deprive Akers of privileges and immunities secured by, *inter alia*, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the Constitution of the United States of America and Article 1, Sections 8 & 10 of the Constitution of Tennessee; were joined in that "conspiracy" and "final overt acts" in furtherance thereof by Defendant Goodwine on April 13, 2000, in that manner set forth in...¶E-118 together with FN133 thereto, respectively, of Akers' Memorandum; and which "final overt acts" further enhanced injuries to Akers in his person, property, and businesses as detailed in...¶127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3), *inter alia*.

COUNT TWENTY-THREE - FINAL COVER-UP

On, or about, May 19, 2000, in Fayette County, Kentucky, the Defendants Bishop, Red Corn, and Overstreet, *inter alia*, conspired to covertly "conceal" those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS ONE, TWO, THREE, & FOUR"; "overt acts" in the furtherance thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinabove "COUNTS ELEVEN & FOURTEEN"; and "R.I.C.O. Violations" detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", in that manner as detailed in...¶¶E-121 through E-124 with FN135 & FN136, respectively, of Akers' Memorandum; and which additional "overt acts" further enhanced the injuries to Akers in his person, property, and businesses as detailed in... ¶126 & 127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3). [D.E. #1, pages 96 - 123]

In view of the foregoing, it is incomprehensible that the U.S. District Court for the Middle Tennessee District could have concluded in Its "MEMORANDUM", as entered September 18, 2001 ["EXHIBIT USSC-09" hereto], that Akers could receive a fair adjudication of this case in any Court in the Commonwealth of Kentucky or that the "ends of justice" require Akers to ever return to any jurisdiction in the Commonwealth of Kentucky – thereby placing himself in peril of "more of the same" tyranny and oppression of/by the herein Defendants-Respondents in violation of the Constitution and Laws of the United States.

ARGUMENT(S)

ARGUMENT I: VENUE PROPERLY LIES WITH THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT, AT NASHVILLE

The District Court asserts that:

"...the only events alleged to have occurred in [the U. S. District of Middle Tennessee] are some telephone calls to and from [Akers] and his former wife, Defendant

> Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and [Akers] extradition in October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including the events that led to his arrests, his trial in state court, sentence, and incarceration. Therefore, based upon the record before the Court, the Court concludes that 'a substantial part of the events or omissions giving rise to the claim[s] occurred' in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in [U. S. District of Middle Tennessee] under 28 U.S.C. § 1391(b)(2)." [*id.*, page 3, lines 2 - 17, clarification added]

Obviously, the District Court has misconstrued the facts - perhaps in the same manner as did the Hon. Henry R. Wilhoit, Chief Judge of the United States District Court for the Eastern District of Kentucky - due to acceptance of the Defendants'-Respondents' fraudulent misrepresentations [e.g., "EXHIBIT USSC-10"hereto at FN6, page 8 thereof]

At the time Akers migrated back to Tennessee on September 23, 1994, **there were no charges whatsoever against him within Kentucky or <u>elsewhere</u>**. ["EXHIBIT USSC-02", D.E. #3, EXHIBIT "V" thereof] and none could have reasorably been anticipated. **<u>All of the subsequent "criminal charges'</u> were the <u>proximate result</u> of interstate "events"**, the effect of which was extortion, blackmail, kidnaping and/or fraudulent extradition of Akers <u>within</u> the State of Tennessee for the express purposes of the Defendants'-Appellants' violations of Akers' privileges and immunities as secured by the United States Constitution; <u>and</u> for which remedies are provided for pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983 & TITLE 42 U.S.C. § 1985(3) - **<u>precisely as Akers is has attempted to do</u> as has been encouraged by the "Congressional purpose" set out in "TITLE 42 U.S.C. § 1988(a)** Applicability of statutory and common law", i.e.,

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in their civil rights, and their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect;"[5]

The District Court further asserts that:

"The only Defendant who resides, is found, has an agent, or conducts his affairs in [the Federal District of Middle Tennessee] is Ernest Williams"; and that: "[a]pparently, [Akers] does not dispute that venue cannot lie in [U. S. District Court for Middle Tennessee-Nashville Division] as to his RICO claims against the other defendants based on 18 U.S.C. § 1965(a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, [Akers] maintains that venue exists here as to the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from another district to answer a RICO claim, it must find that 'the

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[5] See also: **Collins v. Chandler Unified School Dist.**, C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163, i.e., "This section is broad and unequivocal and must be liberally construed to achieve congressional purpose of encouraging compliance with and enforcement of civil rights laws."; **Dennis v. Chang**, C.A.9 (Hawaii) 1980, 611 F.2d 1302, i.e., "This section must be liberally construed to achieve congressional purpose to encourage compliance with and enforcement of civil rights laws."; **Donaldson v. O'Connor**, N.D.Fla 1978, 454 F.Supp. 311, i.e., "This section is to be construed to fulfill congressional purpose of encouraging private litigation to enforce civil rights"; & **Johnson v. Summer**, N.D. Miss.1980, 488 F.Supp. 83, i.e., "This section, providing for attorney fees in civil cases, is to be broadly and liberally construed to achieve its intended purpose to compensate counsel who represents prevailing litigants on civil rights claims and to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**." (emph. added)

> ends of justice' so require. What is required to meet "the ends of justice" requirement is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. ...The Second Circuit, in discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows:
>
> > 'This jurisdiction is not automatic but requires a showing that 'the ends of justice' so require. <u>There is no impediment</u> to prosecution of a civil RICO action in a court foreign to some defendants <u>if it is necessary</u>...'"[6] [see "EXHIBIT USSC-09", page 4, lines 2-16; & page 5, lines 1-14, emphasis added]

<u>Again</u>, the Court errs. Akers <u>certainly does</u> "dispute that venue cannot lie in [U. S. District of Middle Tennessee] as to his RICO claims against the other defendants" and, as bases therefor, relies upon the very same TITLE 18 U.S.C. § 1965(b) which the Court cites.[6] Moreover, Defendant-Respondent Allen I. Rushing now resides in Pennsylvania and <u>there is no</u> "other district which has both personal jurisdiction and venue over all members of the alleged RICO conspiracy". It just cannot be disputed that the United States District Court for the Middle Tennessee District, at Nashville, is the <u>only</u> proper venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

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[6] <u>See also</u>: **<u>Cooper v. Molko</u>**, D.C.Cal., 512 FR.Supp. 563 (1981), i.e., "In action by member of religious group against his parents, venue was proper in Northern District of California where complaint alleged that parents came that district, participated in conspiracy to abduct their son, and held him in motel in district for five days for deprogramming" (emphasis added); & **<u>Jones v. Bales</u>**, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972), i.e. "Where action is based on an alleged conspiracy within this section relating to conspiracies for purpose of depriving any class of persons of equal protection of the laws, **the action may be brought in the district <u>where any overt act occurred</u>**." (emphasis added)

ARGUMENT II: **"ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY IS "COLLATERAL TO MERITS" OF THE CASE**

Inasmuch as those factual allegations contained within the hereinabove "STATEMENT OF THE CASE *SUB JUDICE*" [supra, pages 4 through 21 hereof] will speak for themselves and it is not anticipated that even the Defendants-Respondents will contest this issue, Akers will not waste valuable time and effort in addressing it further. Suffice it to say that the "ORDER" issued by Hon. Robert L. Echols, Chief Judge for the United States District Court for the Middle Tennessee District, on September 18, 2001, is "collateral to the merits" of this case.

ARGUMENT III: **TRANSFER OF CASE TO UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY WILL RESULT IN IRREPARABLE DAMAGE TO AKERS**

The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers' at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it

would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer have the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S. District Court for the Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness even conceivably required by these Defendants have already testified with respect to every conceivable matter in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts**. All such testimony is mechanically- recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) **Akers', who is not an attorney** and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration in Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Respondents for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The herein Defendants-Respondents, realizing they are in a "no win" situation, then file additional fraudulent charges against Akers pursuant to the yet outstanding, and unconstitutional, "Domestic Violence Order" as detailed in ¶E-118 of Akers' Memorandum;
>
> (c) Akers is then, **yet again**, imprisoned within Kentucky for "God only knows" how long;
>
> (d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983;

& TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; &

(e) The Defendants-Respondents escape liability and exposure of their pervasive corruption.

These Defendants-Respondents have committed equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward – thereby avoiding exposure of the pervasive corruption within their ranks.

Truly, the "ends of justice" **require** venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee, at Nashville.

ARGUMENT IV: ISSUES RESPECTING TRANSFER OF CASE TO THE EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ARE "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"

Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety.

ARGUMENT V: "ENDS OF JUSTICE" REQUIRE VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION

The District Court asserts that:

"Based upon the record, the Court finds that the 'ends of justice' do not require that the...defendants be haled before this court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky. As noted previously, venue is proper in that district and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, ...Defendant Williams who lives in Franklin, Tennessee, represented [Akers] in [the Eastern District of Kentucky] during his trial there.[7] See Int'l Shoe Co. v. Washington, 326 U. S. 310, 316 (1945) [i.e.,]

> '...personal jurisdiction requires 'certain minimum contacts' with the forum state and 'that the maintenance of the suit...does not offend traditional notions of fair play and substantial justice.'" [*id.*, page 5, lines 15 -30]

In response, Akers hereby re-states and reiterates the arguments set forth within hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety. Additionally, Akers would point out that he has made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the **ominous perils to Akers if ever returning to anywhere within the jurisdiction of the herein Defendants-Appellees**, e.g.,

---

[7] **This assertion is just, simply, false** and is apparently the product of the fraudulent misrepresentations of herein defense counsels, Robert L. Estes [see D.E. #35, page 7, lines 12 - 14] and Kentucky Assistant Attorney General D. Brent Irvin [see D.E. #38, ¶ 5, lines 1 - 3; & D.E. #39, page 11, lines 12 - 14]. Williams was retained by Akers for the **limited purpose** detailed in ¶E-106 of Akers' Memorandum. Williams **has never** filed an "entry of appearance" on behalf of Akers; **Williams has never appeared in any Court proceeding on behalf of Akers; & Williams has never represented Akers in any "trial".**

"The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, *et seq.*, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants." ["EXHIBIT USSC-02" hereto, D.E.#68, ¶2(A)(iv), page 5 thereof; & "EXHIBIT USSC-10" hereto, at ¶2(B)(I)(iv), pages 5 & 6]

CONCLUSION

Finally, the District Court asserts as follows:

"...even if the Court permitted Plaintiff to litigate the RICO claims [in U. S. District Court for the Middle Tennessee District] venue would still be improper as to [Akers'] Section 1983 & Section 1985 claims because a substantial part of the events giving rise to [Akers'] claims did not occur in [the Federal District of Middle Tennessee][8] (28 U.S.C. § 1391(b)(2)) and Title 18 U.S.C. § 1965(a) applies only to the RICO claims; not the 1983/ Section 1985. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties.[9] Therefore, for the reasons stated, the Court concludes that venue does not properly lie in [the U. S. District of Middle Tennessee] for [Akers'] RICO claims." [see "EXHIBIT USSC-09" hereto, page 6, lines 4 - 17, clarification & emphasis added]

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[8] Once again, the Court errs [see hereinabove FN5, supra, page 27 hereof].

[9] **It is astounding that the Honorable Chief Judge for United States District Court for the Middle Tennessee District-Nashville Division would now be concerned about "hardships" to the herein Defendants-Respondents in view of the history of this case, and with no regard to further hardships upon Akers and his witnesses.**

> "**For the foregoing reasons**, Defendants' Motions to Transfer will be GRANTED, and **this case will be TRANSFERRED** to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.
>
> **An appropriate order will be entered.**" [*id.*, page 7, lines 5 through 9, emphasis added]

Clearly, Akers recognizes that the herein case of "JAMES G. AKERS v. CAROLYN P. BISHOP, *et al*" is a "hot potato" which no one wishes to even pick up - much less hold onto and deal with. Nonetheless, **that is precisely what the Constitution and Laws of the United States of America require**. That is all Akers is asking the Federal Courts to do in this case - **to enforce the Constitution and Laws of the United States of America** and allow "due process of law" to follow its designed course.

WHEREFORE, the Plaintiff-Petitioner, James G. Akers, asks and prays of this Honorable Court to reverse the "ORDER" transferring this action to United States District Court for the Eastern District of Kentucky, as entered on September 18, 2001, by the Hon. Robert L. Echols, Chief Judge for the United States District for the Middle Tennessee District-Nashville Division, and remand with instructions that "venue" shall remain therein in order that Akers may proceed without further hindrance, threat, hardship, and/or undue prejudice in prosecution of his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and the "ends of justice" may be effectively served.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843

CERTIFICATION OF COMPLIANCE

PLAINTIFF-PETITIONER, James G. Akers, without counsel, hereby certifies that the foregoing "PETITION FOR WRIT OF CERTIORARI" fully complies with FRAP 32(a)(7)(C) in conjunction with United States Supreme Court Rule 14.

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Petitioner

STATE OF TENNESSEE)
)
) **s/s**
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 23rd day of April, 2002, has acknowledged the foregoing instrument, and subscribed his signature thereto in my presence.

s/ Varessa Johns
NOTARY PUBLIC, Tennessee-at-large

My Commission Expires: 3/26/2005

[END OF DOCUMENT]

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP; et al, Defendants-Appellees.	FILED FEB 13 2002 LEONARD GREEN, Clerk **PETITION FOR:** **STAY OF MANDATE**

ON APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE-
NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with FRAP Rule 41(d)(2)(A), 6 Cir. R. 41(b), & 6 Cir. I.O.P. 41(c), files with this Honorable Court the within "PETITION FOR STAY OF MANDATE" otherwise effectuating transfer of this case to United States District Court for the Eastern District of Kentucky, at Lexington.

In support of his herein petition, Akers attaches and appends hereto as "EXHIBIT CA6-10" a draft of the "FINAL BRIEF FOR APPELLANT" which would have been filed pursuant to 6 Cir. R. 28(a), 6 Cir. R. 31(a), and Rules 32 (a) & (b) had the Briefing Schedule not been improperly held in abeyance by Deputy Clerk Diane Schnur on November 27, 2001. In further support, Akers asserts as follows:

1. Akers will file a timely Petition for Writ of Certiorari with the United States Supreme Court to determine the constitutionality and/or equity of this Honorable Court's application of the legal theorems set out in *SongByrd v. Estate of Grossman*, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); *Lemon v. Druffel*, 253 F.2d 680, 683 (6th Cir. 1958); *F.D.I.C. v. McGlamery*, 74 F.3d 218, 222 (10th Cir. 1996); & *Middlebrooks v. Smith*, 735 F.2d 431, 432 (11th Cir. 1984) in apparent contravention of the specific language contained within TITLE 28 U.S.C. § 1292(a)(1) in conjunction with the "Collateral Order Doctrine" as well-established in, e.g., ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); ***Abney v. United States***, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977); ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); and ***Firestone Tire & Rubber Co. v. Risjord***, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981).

2. Alternatively, Akers will seek a Writ of Mandamus and/or Writ of Prohibition from the Supreme Court of the United States of America to preclude this case from being transferred to the United States District Court for the Eastern District of Kentucky based upon the issues presented in his timely-filed "RESPONSES" and/or "OBJECTIONS" to the various Defendants'-Appellees' pleadings within this Honorable Court of Appeals for the Sixth Circuit as well as the Honorable United States District Court for the Middle District of Tennessee-Nashville Division.

3. The history of this case and, particularly, the onerous history of Defendants-Appellees Overstreet, Red Corn, Miller, and Witt, make it abundantly clear that Akers will be subjected to extreme peril if ever returning to the Kentucky jurisdiction in which the transferee Federal Court is situated; the "ends of justice" do not require Akers to do so; and it can not reasonably be concluded that Akers will have any adequate remedy whatsoever after "the whole case has been...

...adjudicated" if, in the likely event, he is again fraudulently, oppressively, or otherwise unlawfully imprisoned by these Defendants-Appellees in order to prevent exposure of their corruption.

4. And, finally, this Honorable Court can rest assured that Akers will be prejudiced by deprivation of the physical presence of his witnesses who are residents of Middle Tennessee and intimidation of his witnesses who are residents of Kentucky's Federal Districts in the event this case is required to be litigated in Central Kentucky inasmuch and these Defendants-Appellees have already clearly demonstrated their propensity and prowess for tactics of confusion and delay.

WHEREFORE, the Plaintiff-Appellant, James G. Akers ("Akers'), without counsel, asks and prays of this Honorable Court to "GRANT" the issuance of the herein requested "STAY OF MANDATE" ordering transfer of this case to United States District Court for the Eastern District of Kentucky, at Lexington., pending the disposition of Akers' Petition for Writ of Certiorari or, alternatively, Petition Writ of Mandamus and/or Writ of Prohibition in the Supreme Court of the United States of America in order that Akers' rights and privileges secured by, *inter alia*, the First Amendment to the United States Constitution may be properly preserved.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees."; (2) I am a citizen of the United States of America and the State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "PETITION FOR STAY OF MANDATE", together with all "EXHIBITS" appended thereto, via "UNITED STATES MAIL-FIRST CLASS", postage pre-paid, upon each Defendant-Appellee or their respective legal counsel of record in that manner as hereinafter follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) ss.
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 11th day of February, 2002, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large
My Commission Expires: 03/26/2005

APPENDIX

("EXHIBIT CA6-10" only)

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS, Plaintiff-Appellant,	)	
v.	)	**FINAL BRIEF** **FOR APPELLANT**
CAROLYN P. BISHOP; *et al*, Defendants-Appellees.	)	PURSUANT TO: 6 CIR. R. 28(a), 32(a); & FRAP 32(a), (b)

ON APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE -
NASHVILLE DIVISION

THIS DOCUMENT WAS PREPARED BY:

s/ James G. Akers
JAMES G. AKERS, Plaintiff -Appellant

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STATEMENT OF THE CASE *SUB JUDICE*

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), **without counsel**, in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [D.E. #1] and contemporaneously-filed "MEMORANDUM & MEMORANDUM OF LAW" [D.E. #2] (hereinafter "Akers Complaint" & "Akers' Memorandum", respectively) in the United States District Court for the Middle District of Tennessee - Nashville Division. Jurisdiction was asserted pursuant to the provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing" overt acts alleged in Akers' Complaint had taken place within

the United States District Court for the Middle District of Tennessee, at Nashville. "Diversity of citizenship" of the parties was, at most, a secondary consideration.

The factual allegations contained within Akers' Complaint, when coupled with the applicable Constitutional, Statutory, & Common Laws of the United States of America and "authorities" in support thereof as contained within Akers' Memorandum, speak for themselves. **Not even a single Defendant-Appellee has attempted to controvert even a single averment** and, in fact, they cannot do so without placing themselves in peril of still further penalties and/or sanctions pursuant to Federal Law. **The "merits" of Akers' herein case are not even arguable**.

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee at Nashville, entered his "ORDER" denying the Defendants' various "MOTION[S] TO DISMISS" but granting transfer of this action to the United States District Court for the Eastern District of Kentucky at Lexington [D.E. #80 and accompanying "MEMORANDUM", D.E. #79].[1]

It is apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) preferred to accept the Defendants'-Appellees' fraudulent renditions of the facts with respect thereto; and/or (5) ruled based upon a combination of "all the above".

As a matter of right, this appeal follows pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were **collateral to the**

merits; (2) if denial of an immediate appeal...

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[1] See hereunto relevant excerpts therefrom as quoted within Akers' hereinafter "ARGUMENT(S) I through V" & "CONCLUSION", pages 23 through 29 hereof.

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would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."[2]

JURISDICTION (U. S. DISTRICT COURT)

The United States District for the Middle District of Tennessee, at Nashville, had both jurisdiction and venue pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3).

JURISDICTION (U. S. COURT OF APPEALS)

The United States Court of Appeals for the Sixth Circuit has jurisdiction to hear and adjudicate the within appeal, and to consider all matters with respect thereto, pursuant to the "Collateral Order Doctrine" as set forth in **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in conjunction with **TITLE 28 U.S.C. § 1292(a)(1)**.

STATEMENT OF FACTS (SUMMARY STATEMENT)

The following are excerpts from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [D.E. #1] as filed...

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[2] See also: **Clemence v. Clemence, 8 Kan.App.2d 377, 658 P.2d 368 (1983), i.e., "'Collateral order' doctrine allows appeal from interlocutory order**

which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; **such order is, for purposes of appellate jurisdiction, 'final order'"** (emphasis added); **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, **the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine.**" (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, **Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings.**" (emphasis added)

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in the United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000:

> "1. On August 25, 1993, just two (2) months preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as 'Bishop'), the Plaintiff, James G. Akers (hereinafter 'Akers') was awarded a sizeable cash settlement on behalf of Coleman/Akers & Akers, Incorporated (hereinafter 'C/AA'), a Kentucky corporation owned an operated by Akers and based in the Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.
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> 2. In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; 'Nazi Germany; and 'cold war era' Soviet Bloc countries, Defendant Bishop and her hereinafter named co-conspirators have devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights

pursuant to, ***inter alia***, Article I-Sections 9 & 10, Article III-Section 2, Article IV-Section 2, and the First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments of/to the United States Constitution and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants have not been limited to 'civil rights violations' under 'color of state law', 'color of office', and/or 'malicious prosecution' but extend, in fact, to criminal acts in blatant and direct violation of the Federal Laws as hereinafter enumerated.

3. As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) assaulted, decoyed, inveigled, and robbed in May and June of 1994 and, in the covert concealment thereof, was; (b) unlawfully imprisoned in May and July of 1994 and, in covert concealment thereof; (c) blackmailed and/or extorted from July of 1994 through March of 1995, and in further concealment thereof; (d) essentially 'kidnapped' and fraudulently held in Nashville, Tennessee, during August and September, 1995, and, in the covert concealment thereof; (e) fraudulently extradited back to Kentucky in October of 1995 and, in the further concealment of the hereinbefore schemes; (f) fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, until April 15, 1998, when; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an 'Opinion and Order', as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

4. In the further concealment of those said schemes of/by the Defendants, and as an intentional and continuing course of conduct by them, Akers was: (a) further blackmailed/extorted in March of 1998; was

(b) further oppressively imprisoned in April of 1998; was (c) further blackmailed and/or extorted from April through October of 1998, ...

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and then; (d) yet again, oppressively and unlawfully prosecuted, convicted, and then imprisoned for the very same unconstitutional and fraudulent felony charges, pursuant to the very same unconstitutional and fraudulent indictment, as was the case in May of 1996.

5. Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its second 'Opinion' on May 19, 2000, in which It reversed (in part) Akers' convictions for the second time and ruling, in hereunto relevant part, as follows:

'It is clear that the trial court failed to follow our instructions on remand';

'The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it had not read our decision';

'Without reading our decision, the court could not have followed our directives';

'While our opinion did not specifically so require, the trial court should have granted Akers separate trials on each count';

'By not holding separate trials, the trial court abused its discretion and denied Akers a fair trial...';

'Fairness and justice require us to reverse his (Akers) conviction...'

6. Akers is not an attorney, and does not have any formal training or education in the Law. Having

been forced to expend vast resources in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, further assistance and/or counsel of attorneys with respect to the matters set forth herein." [D.E. #1, pages 2 - 5]

"**COUNT ONE - CONSPIRACY**

128. In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual persons and/or public officials within the Lexington-Fayette Urban County Government and 'associated-in-fact') jointly devised, implemented, and effectuated a 'conspiracy' in violation of TITLE 42 U.S.C. § 1985(2) & (3), ***inter alia***, to unlawfully deprive that class of persons which included Plaintiff Akers of rights, privileges, and/or immunities secured by, ***inter alia***, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution to the extent and in that manner more specifically set forth in hereinabove paragraphs 1, 2, 3(a), 3(b), 12 and more fully detailed in paragraph E-12 (and corresponding footnote [41] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'conspiracy' ultimately resulted in a 'chain conspiracy' in furtherance thereof as detailed in hereinafter 'COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO'; and which 'chain conspiracy' ultimately resulted in commission of those 'overt acts' detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof;

and which 'conspiracy', 'chain conspiracies', 'overt acts', and 'unlawful imprisonment' ultimately resulted in injuries to Akers' person and property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT TWO - CHAIN CONSPIRACY

129. At some time shortly following August 25, 1993, in Fayette County, Kentucky, Defendants Bishop, Fleming, Rushing, and CBT Does 1 through 40 (known only as a group of persons at Central Bank & Trust Company, Inc., and 'associated-in-fact'), jointly devised a 'chain conspiracy' in violation of TITLE 18 U.S.C. § 1985(2) & (3), ***inter alia***, in the furtherance of that 'conspiracy' detailed in hereinabove 'Count One', to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, ***inter alia***, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution, in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in hereinabove paragraphs 3(a), 3(b), 3(c), 9, 12, 13, 14(d), 16, 17, 23 through 27, 29, 31 through 36, 38 through 41, 43, 44, 47, 48, 50(e), & 50(f), and more fully detailed in paragraphs E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) (together with all corresponding footnotes respectively thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' hereto; and which said 'chain conspiracy' ultimately resulted in commission of 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT THREE - CHAIN CONSPIRACY

130. On, or about, April 8, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Layne and Shannon joined in the furtherance of that 'chain conspiracy' detailed in hereinabove "COUNT TWO" by committing specific acts in the furtherance thereof in that manner set forth in the hereinabove paragraphs 24 through 27, 29, 31(a), 31(b), 31(c), 34, 38, 40, 43, 44, & 50 (e) and more specifically detailed in paragraphs E-24 through E-27, E-29, E-31(a), E-31(b), E-31(c), E-34, E-38, E-40, E-43, E-44, & E-50(e), together with all corresponding and referenced footnotes thereto, respectively, of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which said 'chain conspiracy' ultimately resulted in commission of those 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and property detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT FOUR - CHAIN CONSPIRACY

131. On, or about, June 16, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Vaughan, Kelly, and SCC Does 1 thru 50 (known only as a group of individual persons at the Southland Church of Lexington, Inc., and 'associated-in-fact')...

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joined in the furtherance of that 'chain conspiracy' outlined in hereinabove 'COUNTS TWO & THREE' by committing specific acts in furtherance thereof in that manner as set forth in hereinabove paragraphs 41, 42, 46, 48, & 50 and as more fully detailed in paragraphs E-41, E-42, E-46, E-48, & E-50 (together with all the corresponding footnotes thereto, respectively) of Akers'

herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'chain conspiracy' ultimately resulted in commission of those 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

132. On, or about, October 28, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Rushing, CBT Does 1 through 40 (known only as a group of persons at Central Bank & Trust Company, Inc., 'associated-in-fact'), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with another, with a common scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove 'COUNTS TWO through FOUR', with the intent to deprive Plaintiff Akers of rights, priveleges, and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, ***inter alia***, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific 'overt acts' in furtherance thereof and in the manner as set forth in hereinabove paragraphs 2, 3(c), 51, 54, 56 through 58, & 61 through 68 as more detailed within paragraphs E-51, E-54, E-56 through E-58, & E-61 through E-68, (together with all referenced and correspondingly-noted footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM &

MEMORANDUM OF LAW' herewith; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT SIX - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

133. On, or about, March 21, 1995, in Fayette County and/or Mercer County, Kentucky, Defendants Witt and FCS Does 1 through 30 (known only as that group of persons at the Fayette County Sheriff's office and 'associated-in-fact') joined in the furtherance of that 'collective and concerted common scheme and purpose' as outlined in hereinabove 'COUNT FOUR' by committing specific 'overt acts' in the furtherance thereof, in the manner set forth in hereinabove paragraphs 61, 63, 77, & 79 and more specifically detailed in paragraphs E-61, E-63, E-77, & E-79 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in...

...'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT SEVEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

134. On, or about, March 21, 1995, in Fayette County and/or Mercer County, Kentucky, Defendants Clark, LFG Does 1 through 60 (known only as that group

of persons at the Lexington-Fayette Urban County Government and 'associated-in-fact'), and CAO Does 1 through 20 (known only as that gpoup of persons at the Office of the Commonwealth's Attorney for the Twenty-second Judicial District, and 'associated- in-fact') joined in the furtherance of that aforesaid 'collective and concerted common scheme and purpose' as outlined in hereinabove 'COUNTS FOUR through SIX' by committing specific acts in the furtherance thereof in that manner set forth in the hereinabove paragraphs 61, 63, 77, & 79 and more specifically detailed in paragraphs E-61, E-63, E-77, & E-79 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT EIGHT - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

135. On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Red Corn joined in that 'chain conspiracy' as detailed in hereinabove 'COUNTS ONE through FOUR' and the aforesaid 'collective and concerted common scheme and purpose' as detailed in hereinabove 'COUNTS FIVE, SIX, and SEVEN' by committing specific 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 82, 83, 84, 85, 86.I through 86.X, 89, 90(a), 90(b), 90(d), 92, 94, & 96 and more specifically as detailed in paragraphs E-82, E-83, E-84, E-85, E-86.I through E-86.X, E-89, E-90(a), E-90(b), E-90(d), E-92, E-94, & E-96 (together with all the corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM &

MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful...

...imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT NINE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

136. On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Overstreet joined in that 'chain conspiracy' as detailed in hereinabove 'COUNTS ONE through FOUR' and the aforesaid 'collective and concerted common scheme and purpose' as detailed in above 'COUNTS FIVE through EIGHT' by committing specific 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 81, 82, 84, 86.I through 86.X, 87, & 88 and as more specifically detailed in paragraphs E-81, E-82, E-84, E-86.I through E-86.X, E-87, & E-88 (together with all the corresponding footnotes thereto, respectively) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT TEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

137. On, or about, March 5, 1997, in Franklin and/or Fayette County, Kentucky, Defendant Schwartz joined in that 'chain conspiracy' detailed in hereinabove 'COUNTS ONE through FOUR' and 'collective and

concerted common scheme and purpose' as detailed in hereinabove 'COUNTS through EIGHT' by committing specific 'overt acts' in furtherance of those 'conspiracies' and 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 91 & 93 and more specifically as detailed in paragraphs E-91 & E-93 (together with corresponding footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' hereto; and which 'overt acts' contributed to the 'unlawful imprisonment' of Akers; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

138. As the proximate result of those 'conspiracies', and 'chain conspiracies' as detailed in hereinabove 'COUNTS ONE through FOUR', and 'overt acts' in the furtherance thereof as detailed in hereinabove 'COUNTS FIVE through TEN', Akers was 'unlawfully imprisoned' in an aggregate of SEVEN HUNDRED TWENTY-EIGHT (728) DAYS in the custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and the Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner as detailed within hereinabove paragraphs 122(b), 125, & 126, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT TWELVE - FURTHER CHAIN CONSPIRACY/COVER-UP

139. Beginning on, or about, February 27, 1998, and continuing through July 7, 2000, in Fayette County, Mercer County, and/or Franklin County, Kentucky, Defendants Bishop, Fleming, CBT Does 1 through 40 (known only as that group of persons at Central Bank & Trust Company, Inc., and 'associated-in-fact'), Layne, Shannon, SCC Does 1 thru 50 (known only as a group of individual persons at Southland Church of Lexington,

Inc., and 'associated-in-fact'), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of conduct in the furtherance of those 'conspiracies' and/or 'chain conspiracies' as detailed hereinabove 'COUNTS ONE through FOUR', and those 'overt acts' in furtherance thereof as detailed in hereinabove 'COUNTS FIVE through TEN', by committing additional 'overt acts' in the furtherance and covert concealment thereof as detailed in hereinabove paragraphs 97, 98, 99, 103, 104, 106, 107, 108, 110.I through 110.X, 111 through 117, 119, & 121 and more specifically as detailed in paragraphs E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 (together with all the corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'overt acts' resulted in...

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...further 'unlawful imprisonment' of Akers detailed in hereinabove 'COUNT FOURTEEN'; and further injuries to Akers in his person and his property detailed in 'COUNTS TWENTY-FIVE & TWENTY-SIX' hereof; all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT THIRTEEN - FURTHER OVERT ACTS/COVER-UP

140. At some time after October 28, [1998], in Fayette County, Kentucky, FCC Does 1 through 10 (known only as a group of persons at the Office of the Fayette [Kentucky] County Court Clerk Office, and 'associated- in-fact') joined in that 'further chain conspiracy' as detailed in hereinabove 'COUNT TWELVE' when they engaged in an intentional and continuing course of conduct in the furtherance thereof

by committing additional 'overt acts' in furtherance and covert concealment thereof by fraudulently redacting that portion of the 'official state court record' as detailed in hereinabove paragraph 110.V(k), thereby contributing to the further 'unlawful imprisonment' of Akers as detailed in hereinabove "COUNT FOURTEEN"; and further injuries to Akers in his person and property detailed in herein 'COUNTS TWENTY-FIVE & TWENTY-SIX', in violation of TITLE 18 U.S.C. §§ 1983 & 1985.

COUNT FOURTEEN - UNLAWFUL IMPRISONMENT/COVER-UP

141. As the proximate result of those 'conspiracies', 'chain conspiracies' detailed in hereinabove 'COUNTS ONE through FOUR'; and 'overt acts' in the furtherance thereof as detailed in hereinabove 'COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE', Akers was again 'unlawfully imprisoned' in an aggregate of SIX HUNDRED SEVEN (607) DAYS in the custody of the Fayette County [Kentucky] Sheriff and the Kentucky Department of Corrections, respectively, and thereby further injured in his person and his property in that manner as detailed in hereinabove paragraphs 122(b), 125, & 126, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

142. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with the other, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activitiy' as enumerated in hereinafter subparagraphs 142(a) through

142(d); and used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of affairs of the 'enterprises' known as Southland Christian Church of Lexington, Inc., and the 'Association-in-fact' (comprised of all the hereinabove 'persons' named as 'Defendants' herein, both jointly and severally, as herein 'associated-in-fact') through a 'pattern of racketeering activity'; and the 'activities' of which said 'enterprises' having and maintaining affects on both 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific 'predicate acts' are as hereinafter enumerated:

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(a) On, or about, May 12, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with the other, with common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of 'kidnapping' in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130, in preparation for the hereinafter predicate acts depicted 'COUNT FIFTEEN(b) & (c)', in that manner as set forth in hereinabove paragraphs 31, 32, 33, 34, & 38, and as further detailed in parapraphs E-31, E-32, E-34, & E-38 (with all corresponding footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate act' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraphs 125 & 127;

(b) From May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, and/or Centre City, Minnesota, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., as herein 'associated-in-fact'), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as 'COUNT FIFTEEN(c)' hereof, and with a common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the additional predicate act of 'unlawful imprisonment' of Akers in violation of K.R.S. 509.020 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner detailed in hereinabove paragraphs 31, 32, 33, 34, & 38 and as further detailed in parapraphs E-31, E-32, E-34, & E-38 (together with all corresponding footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate act' ultimately resulted in injuries to Akers in his person, businesses, and property as further detailed in hereinabove paragraphs 125 & 127;

(c) On, or about, June 28, 1994, in Fayette and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., as herein 'associated-in-fact'), acting collectively and in concert each with the other, and with a common scheme and purpose, devised, effectuated, and/or otherwise participated in, the additional predicate act of 'theft by unlawful taking or disposition' of property of Akers and hereinabove Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00, in violation

of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner as is set forth in hereinabove paragraphs 43 and further detailed in parapraph E-43 (together with corresponding footnotes [55] & [56] thereto) of Akers' contemporaneously-filed 'Memorandum & Memorandum of Law' herewith; and which 'predicate act' ultimately resulted in injuries to Akers in his businesses and property detailed in hereinabove paragraphs 125 & 127; &

(d) On, or about, June 28, 1994, in Fayette and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, ...

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...Inc., as herein 'associated-in-fact'), acting collectively and in concert each with the other, and with a common scheme and purpose, devised, effectuated, and/or otherwise participated in, the further predicate act of 'tampering with physical evidence' in violation of Title 18 U.S.C. § 1512 and K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner as is set forth in hereinabove paragraph 43 and further detailed in parapraph E-43 (with corresponding footnotes [55] & [56] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate act' ultimately resulted in injuries to Akers in his person, businesses, and property as detailed in hereinabove paragraphs 125 & 127.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

143. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, and Vaughan collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraphs 143(a); and used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the 'enterprises' known as Dr. John J. Vaughan, M. D., and the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, both jointly and severally, and 'associated-in-fact') through such a 'pattern' of 'racketeering activity'; and the 'activities' of those said 'enterprises' having maintained affects on 'interstate and foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific "predicate acts" are as hereinafter enumerated:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and Vaughan, proceeding in concert each with the other, with a common scheme and purpose, devised, effectuated, implemented, and/or otherwise participated in, the commission of the predicate acts of 'wire fraud' (in violation of Title 18 U.S.C. § 1341) and 'mail fraud' (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in hereinabove paragraphs 2, 8, 28, 35, 36, 41, 42, 48, & 49 and further detailed in parapraphs E-2, E-8, E-28, E-35, E-36, E-41, E- 42, E-48, & E-48 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' ultimately resulted in

injury to Akers in his person, businesses, and property as detailed in hereinabove paragraphs 125 & 127.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

144. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, and Kelly collectively and in concert each with the other, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 144(a), in attempt to derive funds therefrom for use in acquisition

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of, or maintaining interests in, and/or participating in the conduct of the affairs of the 'enterprise' known as the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern' of "racketeering activity'; and the 'activities' of which said 'enterprises' having had and/or maintained affects on both 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those said specific 'predicate acts' are as hereinafter enumerated:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and/or Kelly, collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of 'forgery in the second degree' (in violation of K.R.S. 516.030), and 'theft by extortion' (in violation of K.R.S. 514.040), both being violations of TITLE 18 U.S.C.

§§ 1961 & 1962, in that manner set forth in hereinabove paragraph 50 and as further detailed in paragraph E-50 (with corresponding footnote [62] thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraphs 125 and 127 and/or 'COUNTS TWENTY-FOUR, TWENTY-SIX, & TWENTY-SEVEN' hereof.

COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

145. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop & Rushing, acting in concert each with the other, with a common scheme, devised and/or effectuated and, thereby, committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 145(a), in an overt attempt to use income derived therefrom in acquisition of, maintaining interest in, and participating in conduct of the affairs of, the 'enterprise' known as the 'Association-in-fact' comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern' of 'racketeering activity'; and the 'activities' of which said 'enterprise' both having and maintaining affects on 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific 'predicate acts' are as hereinafter enumerated:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, Defendants Bishop and Rushing, acting in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise

participated in the commission of the two and distinctly separate predicate acts of 'blackmail' (in violation of Title 18 U.S.C. § 873); and 'extortion' (in violation of Title 18 U.S.C. § 875); both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraph 56 and more specifically detailed in paragraph E-56 (together with corresponding footnote [67] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' resulted in injuries to Akers in his businesses and in his property as detailed in hereinabove paragraphs 125 & 127.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

146. In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN thru EIGHTEEN', Defendant Red Corn joined in those 'conspiracies', 'chain conspiracies', and 'overt acts' in furtherance thereof on, or about November 1, 1995, in Fayette County and/or Mercer County, Kentucky, and acting both independently and in concert and/or consortium with those other Defendants named herein, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 146(a) through 146(d), and having derived funds therefrom, and attempting to derive additional funds therefrom for her use in acquisition of, or maintaining interests in, or participating in the conduct of the affairs of the 'enterprise' known as the 'Association-in-fact', comprised of all the hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and

'associated-in-fact') through a 'pattern' of 'racketeering activity'; and the 'activities' of which having affects on 'interstate and/or foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those 'predicate acts' are as hereinafter enumerated:

> (a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully influenced, assisted, and/or directed Defendant Bishop in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraphs 81 & 82 and as further detailed in paragraphs E-81 & E-82 (with corresponding footnotes [81] & [82] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 125 & 127 and 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof;
>
> (b) In mid-May, 1995, in Fayette County, Kentucky, via telephonic communications to Pulaski County, Kentucky, Defendant Red Corn effectuated commission of the 'predicate act' of 'tampering with a witness' in violation of TITLE 18 U.S.C. § 1512 and, thereby, violated provisions of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraph 86.I(a) and further detailed in paragraph E-86.I(a), together with corresponding footnote [85]

thereto, of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which said 'predicate act' resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and/or 'COUNT TWENTY-SEVEN' hereof;

(c) On May 20 through May 22, 1995, in Fayette County, Kentucky, Defendant Red Corn committed numerous of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of...

...TITLE 18 U.S.C. §§ 1961 & 1962, in those manners as set forth in hereinabove paragraphs 86.II through 86.VIII and further detailed in paragraphs E-86.II through E-86.VIII (together with corresponding footnotes [86] through [93] thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which such additional 'predicate acts' further resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(d) On October 26 through 28, 1998, in Fayette County, Kentucky, Defendant Red Corn committed numerous of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in hereinabove paragraphs 110.III through 110.VII,

110.IX, & 110.X, as further detailed in paragraphs E-110.III through E-110.VII, E-110.IX, & E-110.X (together with corresponding footnotes [108] thru [126] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'predicate acts' resulted in further injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and "COUNT TWENTY-SEVEN" hereof.

COUNT TWENTY - R.I.C.O. VIOLATIONS

147. In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN thru EIGHTEEN', Defendant Overstreet joined in those 'conspiracies', 'chain conspiracies', and 'overt acts' in furtherance thereof on, or about, November 10, 1995, in Fayette County and/or Mercer County, Kentucky, and acting both independently and in concert and/or consortium with those other Defendants named herein, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity', as enumerated in hereinafter subparagraphs 146(a) & 146(b), and having derived funds therefrom, and attempting to further derive additional funds therefrom for her use in acquisition of, and/or maintaining interests in, and/or participating in conduct of the affairs of the 'enterprise' known as the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern of racketeering activity'; and the 'activities' of which 'enterprise' having affects on 'interstate and/or foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those 'predicate acts' are as hereinafter enumerated:

(a) On May 20 through May 22, 1995, in Fayette County, Kentucky, Defendant Overstreet

committed two or more 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners as set forth in hereinabove paragraphs 86.II through 86.VIII and further detailed in paragraphs E-86.II through E-86.VIII (together with corresponding footnotes [86] through [93] thereto) of Akers'... contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF...

LAW'; and which such additional 'predicate acts' further resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(b) On October 26 through 28, 1998, in Fayette County, Kentucky, Defendant Overstreet committed two or more 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in hereinabove paragraphs 110.III through 110.VII, 110.IX, & 110.X and as further detailed in paragraphs E-110.III through E-110.VII, E-110.IX, & E-110.X (together with corresponding footnotes [108] thru [126] thereto) of Akers; contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'predicate acts' resulted in further injuries to Akers in his businesses and/or

property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof.

COUNT TWENTY-ONE - R.I.C.O. VIOLATIONS

148. On, or about, September 2, 1998, in Fayette County, Kentucky, and/or Williamson County, Tennessee, and/or through telephonic communications there between, Defendants Red Corn, Overstreet, and Williams, acting both independently and/or in consortium each with another, engaged in an intentional course of conduct directed at Akers and, with a common scheme and/or objective, participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity', as enumerated in hereinafter subparagraph 148(a) through 148(c); having derived funds therefrom, and attempting to derive additional funds therefrom for use in acquisition of, maintaining interests in, and/or participating in conduct of the affairs of the 'enterprises' known only as 'Ernest W. Williams, Attorney-at-law' and the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and herein 'associated-in-fact'); through a 'pattern of racketeering activity'; and the 'activities' of which each such 'enterprises' having and maintaining affects on 'interstate and/or foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and as follows:

(a) 'Blackmail' (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 873, ***inter alia***, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts' further enhanced injuries to Akers in his businesses and

property as detailed in hereinabove paragraph 127 and/or 'COUNT TWENTY-SEVEN' hereof;

(b) 'Extortion' (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 875, ***inter alia***; and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts'...

...further enhanced injuries to Akers in his businesses and property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(c) 'Civil rights intimidation' (in violation of Tennessee Code Annotated 39-17-309 in that manner set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; each such 'predicate act' depicted as 'COUNT TWENTY-ONE(a), (b), & (c)' hereof being violations of TITLE 18 U.S.C. §§ 1961 & 1962; and which additional "predicate acts" further enhanced injuries to Akers in his businesses and property detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof.

COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP

149. On, or about, March 30, 2000, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and Witt continued in those 'conspiracies' as detailed in hereinabove 'COUNTS TWO, THREE, & FOUR'; and 'overt acts' in the furtherance thereof as detailed in 'COUNTS FIVE, SIX through TEN, and THIRTEEN'; and in concealment of those 'R.I.C.O. Violations' as detailed in hereinabove 'COUNTS FIFTEEN through TWENTY-ONE', by conspiring to, participating in, and otherwise effectuating further schemes to deprive Akers of his privileges and/or immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the United States Constitution, and Article 1, Sections 8 & 10 of the Constitution of Tennessee in that manner set forth in hereinabove paragraph 118 and as further detailed in footnote [1] and paragraph E-118 (together with corresponding footnote [133] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; were joined therein that 'conspiracy' and 'final overt acts' in the furtherance thereof by Defendant Goodwine on April 13, 2000, in the manner set forth in hereinabove paragraph 118 and as further detailed in footnote [1] and paragraph E-118 (together with corresponding footnote [133] thereto) of Akers' 'MEMORANDUM & MEMORANDUM OF LAW' as filed contemporaneously herewith; and which 'final overt acts' in furtherance of that 'conspiracy' as detailed in hereinabove 'COUNT ONE', and 'chain conspiracy' detailed in hereinabove 'COUNTS TWO, THREE, FOUR, & TWELVE'; further enhanced injuries to Akers in his person and property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; all in further violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***.

COUNT TWENTY-THREE - FINAL COVER-UP

150. On, or about, May 19, 2000, in Fayette County, Kentucky, Defendants Bishop, Red Corn, and Overstreet, ***inter alia***, conspired to covertly 'conceal' those 'conspiracies' and 'chain conspiracies' as detailed in hereinabove 'COUNTS ONE, TWO, THREE, & FOUR'; and 'overt acts' in furtherance thereof as detailed in 'COUNTS FIVE, SIX through TEN, & THIRTEEN'; and 'unlawful imprisonment' of Akers detailed in hereinabove 'COUNTS ELEVEN & FOURTEEN'; and those 'R.I.C.O. Violations'...

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detailed in hereinabove 'COUNTS FIFTEEN thru TWENTY-ONE', in the manner as detailed in hereinabove paragraph 121 through 124 and further detailed in paragraphs E-121 through E-124 (with correspondingly referenced footnotes [135] & [136] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'overt acts' further enhanced injuries to Akers in his person, property, and businesses as detailed in hereinabove paragraphs 126 & 127; all in further violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***." [D.E. #1, pages 96 - 123]

In view of the foregoing, **it is <u>absolutely incomprehensible</u> for <u>any Court</u>** to conclude that Akers can receive a fair adjudication of this case **<u>in any Court</u>** within the Commonwealth of Kentucky and/or that **the "ends of justice" <u>require</u>** Akers to **<u>ever</u>** return to **<u>any jurisdiction</u>** within the Commonwealth of Kentucky – thereby placing himself in peril of **"<u>more of the same</u>" tyranny and oppression** of/by the herein Defendants in violation of **TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3), *inter alia***.

ARGUMENT(S)

ARGUMENT I: **VENUE PROPERLY LIES WITH UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION**

The District Court asserts that:

> "...the only events alleged to have occurred in [the U. S. District of Middle Tennessee] are some telephone calls to and from [Akers] and his former wife, Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and [Akers] extradition on October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including the events that led to his arrests, his trial in state court, sentence, and incarceration. Therefore, based upon the record before the Court, the Court concludes that 'a substantial part of the events or omissions giving rise to the claim[s] occurred' in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in [the U. S. District of Middle Tennessee] under 28 U.S.C. § 1391(b)(2)." [D.E. #79, page 3, lines 2 thru 17, clarification added]

Obviously, the District Court has misconstrued the facts - perhaps in the same manner as did the Hon. Henry R. Wilhoit, Chief Judge of the United States District Court for the Eastern District of Kentucky -- due to acceptance of the Defendants'-Appellees' fraudulent misrepresentations. [see, e.g., D.E. #78 at FN6, page 8 thereof]

At the time Akers migrated back to Tennessee on September 23, 1994, there were no charges against him whatsoever within Kentucky **or elsewhere**. [see "EXHIBIT 'V'",

D.E. #3] and none could have reasonably been anticipated. All the subsequent "criminal charges" were the direct result of interstate "events", the effect and results of which were extortion, blackmail, kidnapping and/or fraudulent extradition of Akers **within the State of Tennessee** for the express purposes of the Defendants'-Appellants' violations of Akers' privileges and immunities as secured by the United States Constitution; and for which remedies are provided for pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3) - precisely as Akers has proceeded to do as encouraged by the Congressional purpose set out in "TITLE 42 U.S.C. § 1988(a) Applicability of statutory and common law",[3] i.e.,

> "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in their civil rights, and for their vindication, shall be

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[3] See also: **Collins v. Chandler Unified School Dist., C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163**, i.e., "This section is broad and unequivocal and must be liberally construed to achieve congressional purpose of encouraging compliance with and enforcement of civil rights laws."; **Dennis v. Chang, C.A.9 (Hawaii) 1980, 611 F.2d 1302**, i.e., "This section must be liberally construed to achieve congressional purpose to encourage compliance with and enforcement of civil rights laws."; **Donaldson v. O'Connor, N.D.Fla 1978, 454 F.Supp. 311**, i.e., "This section is to be construed to fulfill congressional purpose of encouraging private litigation to enforce civil rights"; & **Johnson v. Summer, N.D. Miss.1980, 488 F.Supp. 83**, i.e., "This section, providing for attorney fees in civil cases, is to be broadly and liberally construed to achieve its intended purpose to compensate counsel who represents prevailing litigants on civil rights claims and to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**." (emphasis added)

> exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect;"

The District Court **completely misses the point** that the events which occurred within the Federal District of Middle Tennessee were not "tangential" but, rather, **were pivotal to all those subsequent events occurring in the Federal District of Eastern Kentucky**.

The District Court further asserts that:

> "The only Defendant who resides, is found, has an agent, or conducts his affairs in [the U. S. District of Middle Tennessee] is Ernest Williams"; and that: "[a]pparently, [Akers] does not dispute that venue cannot lie in [the U. S. District of Middle Tennessee] as to his RICO claims against the other defendants based on 18 U.S.C. § 1965(a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, [Akers] maintains that venue exists here as to the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from another district to answer a RICO claim, it must find that 'the ends of justice' so require. What is required to meet the 'ends of justice' requirement is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy" [D.E. #79, page 4, lines 2 thru 16, emphasis added]. Again, the Court errs.

Akers certainly does "dispute that venue cannot lie in [the U. S. District of Middle Tennessee] as to his RICO claims against the other defendants" and relies upon the very same TITLE 18 U.S.C. § 1965(b)[4] which the Court cites as the basis therefor. Moreover, Defendant-Appellee Allen I. Rushing resides in Pennsylvania and **there is no "other district which**

has personal jurisdiction and venue over all members of the alleged RICO conspiracy". It just cannot be disputed that the United States District Court for the Middle District of Tennessee

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[4] "The Second Circuit, in discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows: 'This jurisdiction is not automatic but requires a showing that 'the ends of justice' so require. **There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary...**" (citing **PT United Can Co. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d Cir. 1998)**) [D.E. #79, page 5, lines 1 thru 14, emphasis added]

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at Nashville is the only proper venue for Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".[5]

ARGUMENT II: "ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY IS "COLLATERAL TO THE MERITS" OF CASE

Inasmuch as those factual allegations contained within the hereinabove "STATEMENT OF FACTS (SUMMARY STATEMENT)" [supra, pages 8 through 22 hereof] will speak for themselves and it is not anticipated that even the Defendants-Appellees will contest this issue, Akers will not waste valuable time and effort in addressing it further. Suffice it to say that the District Court's "ORDER" is "collateral to the merits" of this case.

ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS

The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers' at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay...

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[5] See also: **Cooper v. Molko, D.C.Cal., 512 FR.Supp. 563 (1981)**, i.e., "In action by member of religious group against his parents, **venue was proper in Northern District of California where complaint alleged that parents came that district, participated in conspiracy** to abduct their son, and held him in motel in district for five days for deprogramming" (emphasis added); & **Jones v. Bales, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972)**, i.e. "**Where action is based on an alleged conspiracy within this section** relating to conspiracies for purpose of depriving any class of persons of equal protection of the laws, **the action may be brought in the district where any overt act occurred.**" (emphasis added)

..witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer have the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S.

District Court for the Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness conceivably required by the herein Defendants-Appellees have already testified with respect to every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts. All such testimony is mechanically- recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent...

> ...incarceration within Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Appellees for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The Defendants-Appellees, realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118 of Akers Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [supra, page 21 hereof];

(c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for "God only knows" how long;

(d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; &

(e) The Defendants-Appellees escape liability and exposure of corruption.

The herein Defendants-Appellees have committed equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward - thereby avoiding exposure of the corruption within their ranks.

Truly, **the "ends of justice" require** venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee at Nashville.

ARGUMENT IV: ISSUES WITH RESPECT TO TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"

Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY...

..AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety.

ARGUMENT V: THE "ENDS OF JUSTICE" REQUIRE VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

The District Court asserts that:

"Based upon the record, the Court finds that the 'ends of justice' do not require that the...defendants be haled before this court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky. As noted previously, venue is proper in that district and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, ...Defendant Williams who lives in Franklin, Tennessee, represented [Akers] in [the Eastern District of Kentucky] during his trial there.[6] See Int'l Shoe Co. v. Washington, 326 U. S. 310, 316 (1945)", i.e.,

> '...personal jurisdiction requires 'certain minimum contacts' with the forum state and 'that the maintenance of the suit...does not offend traditional notions of fair play and substantial justice.'

Based upon the facts and circumstances of this case, the Court finds that justice does not require that this case be litigated [in the U. S. District of Middle Tennessee]." [D.E. #79, page 6, lines 1 thru 3, emphasis added]

In response, Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE

TO AKERS" the same as if set forth herein in their entirety. Additionally, Akers would point out that he has...

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[6] **This assertion is just, simply, false** and is apparently the product of the fraudulent misrepresentations of herein defense counsels, Robert L. Estes [see D.E. #35, page 7, lines 12 - 14] and Kentucky Assistant Attorney General D. Brent Irvin [see D.E. #38, ¶ 5, lines 1 - 3; & D.E. #39, page 11, lines 12 - 14]. Williams was retained by Akers for the **limited purpose as detailed in ¶ 106 of Akers' Complaint & ¶ E-106 of Akers' Memorandum**. Williams has **never filed an "Entry of Appearance" on behalf of Akers**; Williams **has never appeared in any Court proceeding on behalf of Akers**; nor has Williams **ever represented Akers in any "trial".**

..made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the ominous perils to Akers if **ever returning to anywhere** within the jurisdiction of the herein Defendants-Appellees, e.g.,

> "The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, ***et seq.***, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18]

CONCLUSION

Finally, the District Court asserts as follows:

"...even if the Court permitted Plaintiff to litigate the RICO claims [in the U. S. District of Middle Tennessee] venue would still be improper as to [Akers'] Section 1983 and Section 1985 claims because a substantial part of the events giving rise to [Akers'] claims did not occur in [the U. S. District of Middle Tennessee][7] (28 U.S.C. § 1391(b)(2)) and Title 18 U.S.C. § 1965(a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties.[8] Therefore, for the reasons stated, the Court concludes that venue does not properly lie in [the U. S. District of Middle Tennessee] for [Akers'] RICO claims." [D.E. #79, page 6, lines 4 thru 17, emphasis added]

"For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT. ¶ An appropriate order will be entered." [D.E. #79, page 7, lines 5 thru 9, emphasis added]

Clearly, Akers recognizes that the herein case of "JAMES G. AKERS v. CAROLYN P. BISHOP, ***et al***" is a "hot potato" which no one wishes to even pick up – much less hold onto and

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[7] Once again, the Court errs [see hereinabove FN5, supra, page 25 hereof].

[8] **It is <u>astounding</u> that the District Court would now be concerned about "hardships" to the herein Defendants-Appellees in view of the history of this case, <u>with no regard</u> to <u>further hardships</u> upon Akers and his <u>witnesses</u>.**

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deal with. Nonetheless, **that is <u>precisely</u> what the Constitution and Laws of the United States of America <u>require</u>**. That is all Akers is asking the Federal Courts to do in this case – **to enforce**

the Constitution and Laws of the United States of America and allow "due process of law" to follow its designed course.

WHEREFORE, the Plaintiff-Appellant, James G. Akers, **without counsel**, asks and prays of this Honorable Court to reverse the "ORDER" granting transfer of this action to the United States District Court for the Eastern District of Kentucky, at Lexington, as entered on September 18, 2001, by the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee - Nashville Division, and remand with instructions that "venue" shall remain therein in order that the "ends of justice" may be effectively served.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843

* * * * * * * * * * * * * * * * *

CERTIFICATION OF COMPLIANCE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, and hereby certifies that the foregoing "FINAL BRIEF FOR APPELLANT" fully complies with FRAP 32(a)(7)(C).

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees.**"; (2) I am a citizen of the United States of America and the State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Appellant, James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**FINAL BRIEF FOR APPELLANT**" pursuant to **6 CIR. R. 28(a); 6 CIR. R 31(a); & FRAP 32(a), (b)**, via "**UNITED STATES MAIL-FIRST CLASS**", postage pre-paid, upon the Defendants-Appellees named therein and/or their legal counsel in that manner as follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 11th day of February, 2002,* has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large
My Commission Expires: 3/26/2005

[END OF DOCUMENT]

FILED
DEC 26 2001
LEONARD GREEN, Clerk

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)
	)
Plaintiff-Appellant,	) **RESPONSE AND**
	) **OBJECTIONS TO:**
	) MOTION [OF APPELLEES
	) PAMELA MILLER AND
v.	) LEXINGTON-FAYETTE
	) URBAN COUNTY
	) GOVERNMENT] TO
	) DISMISS AND [THE
	) ACCOMPANYING] MOTION
	) TO STAY PROCEEDINGS
CAROLYN P. BISHOP; et al,	) PENDING MOTIONS TO
	) DISMISS
Defendants-Appellees.)	

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with Rule 26 and U.S.C.A.6 Combined Rule 27(e) of the Federal Rules of Appellate Procedure, files with this Honorable Court the hereinafter "**RESPONSE**" to the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER

PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, and received by Akers at Post Office Box 3648; Brentwood, Tennessee 37024 on December 13, 2001.

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1. In her latest desperate attempt to escape her formidable liabilities as detailed in Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000, the Defendant-Appellee Pamela Miller:

> (A) Appears to now fraudulently enjoin the Lexington-Fayette Urban County Government (LFUCG) in this civil action and appeal ***sub judice*** [page 1, ¶ 1];
>
> (B) "Concurs with the motions" and "adopts the pleadings" as previously filed herein by Appellees Katherine Witt, John J. Vaughan, M.D., Allen I. Rushing, Doris Fleming, Todd M. Layne, & Donald Shannon [page 1, ¶ 2, lines 1 thru 4];
>
> (C) "Concurs", "adopts", and incorporates the same "as if fully set forth [therein]" an unidentified "motion to stay further proceedings pending motions to dismiss and to stay filing of briefs pending the motions to dismiss" [page 1, ¶ 2, lines 4 thru 7]; &
>
> (D) "Requests that the appeal of the Appellant, James G. Akers, be dismissed and that further proceedings be stayed until disposition on the motions to dismiss and to any and all other relief to which the Appellee is entitled" [page 1, ¶ 3].

2. In response, Akers hereby re-states, reiterates, and supplements his responses with respect thereto as follows:

On November 21, 2000, Akers filed and served his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" together

with an extensive and contemporaneously- filed "MEMORANDUM & MEMORANDUM OF LAW" and "APPENDIX/ RELEVANT EXHIBITS" in support thereof (hereinafter "Akers' Complaint", "Akers' Memorandum", & "Akers' Appendix", respectively) [D.E. #1, 2 & 3, respectively],

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in the United States District Court for the Middle District of Tennessee, Nashville Division, in which Akers asserted that, ***inter alia***, beginning in about mid-July, 1993, and continuing through July 7, 2000:

> (a) The named Defendants-Appellees engaged in various "conspiracies" and/or "chain conspiracies" in violation of TITLE 42 U.S.C. § 1985 [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz***, "COUNT ONE" through "COUNT FOUR", pages 8 through 11; "COUNT TWELVE", page 13; & "COUNT TWENTY-THREE, page 22, for enumerations] **and, in the furtherance and concealment thereof;**
>
> (b) The named Defendants-Appellees committed numerous specific "overt acts" in violation of TITLE 42 U.S.C. § 1983 [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz***, "COUNT FIVE" through "COUNT ELEVEN", pages 11 through 13; "COUNT THIRTEEN" & "COUNT FOURTEEN", page 14; and "COUNT TWENTY-TWO" & "COUNT TWENTY-THREE", pages 21 & 22 for enumerations] **and, in the course thereof;**
>
> (c) The named Defendants-Appellees committed numerous predicate acts in violation of TITLE 18 U.S.C. § 1961, ***et seq.***, as are all detailed within Akers' Complaint and Memorandum in support [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz***, "COUNT FIFTEEN" through "COUNT TWENTY-ONE", pages 8 through 11, for enumerations].

(d) With the exception of Defendant-Appellee Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7]; Defendant-

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Appellee Kelly's denial that he has had any contact with Akers since September 23, 1994 [see D.E. #76, page 2, lines 8 & 9]; & Defendant-Appellee Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record" [see D.E. #83 at ¶ 3],[1] **not <u>even a single</u> Defendant-Appellee** has attempted to controvert **<u>even a single</u> averment** contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Appellees **<u>cannot deny the allegations against them</u>** without **subjecting themselves to still further sanctions and/or penalties under Federal Law**.

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee at Nashville, entered his "ORDER" denying the Defendants' various "MOTION[S] TO DISMISS" but granting transfer of this action to the United States District Court for the Eastern District of Kentucky at Lexington [D.E. #80 and accompanying "MEMORANDUM", D.E. #79].

As a matter of right, Akers appealed pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in **<u>Cohen v. Beneficial Loan Corp.</u>, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders <u>were immediately</u>**

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[1] Even so, the remaining factual allegations would likely be sufficient to obtain a "Summary Judgement" against these Defendants-Appellees - **notwithstanding the fraudulent misrepresentations contained within their said pleadings.** [see D.E. #68, D.E. #69, & D.E. #78, respectively]

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appealable (1) if they were **collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review;** and (3) if the issue raised was "**too important**" to "**be deferred until the whole case is adjudicated.**"[2]

The Defendants-Appellees do not have meritorious defenses to Akers' claims or appeal and, if they did, they should have presented those in accordance with the "Briefing Schedule" as set by this Honorable Court pursuant to Rule 31 of the Federal Rules of Appellate Procedure or, otherwise, now prepare for trial and allow "due process of law" to follow its designed course.

In specifically the same hereinabove order as Defendant-Appellee Miller's pleadings, Akers further responds as follows:

> (A) In Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of Tennessee, at Nashville, on November 21, 2000, "it is obvious that Akers has not named either the Lexington-Fayette [Kentucky] Urban County Government or the innocent taxpayers thereof or the Defendant Miller in her official capacity. The fact that Defendant Miller has committed unconstitutional and otherwise unlawful acts in her

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[2] See also, e.g., **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 **only if it falls within the *Cohen* doctrine.**" (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception**

is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

'private capacity' which resulted in specific acts in the furtherance thereof by other persons acting in their individual 'official capacities', **without jurisdiction**, and/or other 'persons' in a purely private capacity, does not relieve Miller of her liabilities as a 'person' under Title 18 U.S.C. §§2, 3, 4, 5, 1964(c); Title 42 U.S.C. §§ 1983 & 1985(3); and those other related statutory provisions cited in Akers' Memorandum" [see, e.g., D.E. #46 at ¶ 4, page 4, line 25, through page 5, line 10]. However, inasmuch as Miller and her purported counsels, Edward W. Gardner (previous Director of Litigation for LFUCG) and Theresa L. Holmes (current "Acting Director" of Litigation for LFUCG) have thus far chosen to misappropriate and/or misuse revenues collected from innocent taxpayers of Fayette County, Kentucky, for the illicit purpose of defending Miller for **unlawful acts committed in her private capacity**, Akers has no objection if those innocent taxpayers themselves do not. An "Amended Complaint" will be tendered accordingly.

(B) Miller "concurs with the motions" and "adopts the pleadings" as previously filed herein by Appellees Katherine Witt, John J. Vaughan, M.D., Allen I. Rushing, Doris Fleming, Todd M. Layne, & Donald Shannon. In the same chronological order in which those "motions"/"pleadings" and Akers' "responses" thereto were served, Akers re-states and reiterates his responses thereto as follows:

(i) On October 23, 2001, Defendant-Appellee Jerry L. Kelly filed and served his

"MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS APPEAL FOR LACK OF JURISDICTION", asserting that Akers' hereinabove...

...appeal should be dismissed in that it was not pursuant to a "final order" and should be dismissed pursuant to Title 28 U.S.C. § 1291. [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #6]

(ii) On October 30, 2001, Plaintiff-Appellant Akers served his "RESPONSE TO: 'MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS APPEAL FOR LACK OF JURISDICTION'", pointing out that Kelly misapprehended Title 28 U.S.C. § 1291 and the "treatise" set forth in 17 Moore's Federal Practice § 111.60[1] in context with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**. [see "CA6-02'", page 6 of 8, Item #10]

(iii) On November 6, 2001, Defendant-Appellee Katherine H. Witt served her "MOTION TO DISMISS APPEAL/REPLY TO RESPONSE OF AKERS", echoing Kentucky Assistant Attorney General D. Brent Irvin's citation of this Honorable Court's "unpublished decision" in **BLUE ASH DEVELOPMENT, INC., and Royalton Resources, Inc. Plaintiffs-Appellants, v. Susan E POLAN, Basil A. Diamond, and Susan I. Murray, Defendants-Appellees, 74 F.3d 1240, 1996 WL 1828 (6th CIR.(Ky))** as, substantially, the grounds therefor. [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #14]

(iv) As well on November 6, 2001, Defendant-Appellee Doris Fleming served her

"MOTION OF APPELLEE, DORIS FLEMING, TO DISMISS APPEAL FOR LACK OF JURISDICTION" [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #2] based upon virtually-identical grounds as those asserted by...

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...Defendant-Appellee Katherine H. Witt in her hereinabove "MOTION TO DISMISS APPEAL/ REPLY TO RESPONSE OF AKERS" and Kentucky Assistant Attorney General D. Brent Irvin's hereinabove "MOTION OF STATE APPELLEES TO DISMISS APPEAL FOR LACK OF JURISDICTION". [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #12]

(v) On November 10, 2001, Plaintiff-Appellant James G. Akers served his "RESPONSE TO: 'MOTION OF [Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz] TO DISMISS APPEAL FOR LACK OF JURISDICTION'", pointing out that the "State" Defendants-Appellees and their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, had both misconstrued and misapplied this Honorable Court's "unpublished decision" in **BLUE ASH DEVELOPMENT, INC., and Royalton Resources, Inc. Plaintiffs-Appellants, v. Susan E POLAN, Basil A. Diamond, and Susan I. Murray, Defendants-Appellees, 74 F.3d 1240, 1996 WL 1828 (6th CIR.(Ky))** as the asserted the grounds therefor in context with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed.**

1528 (1949). [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #5]

(vi) As required by [the] "BRIEFING SCHEDULE" issued by the Court on October 16, 2001, **together with Rule 31 of the Federal Rules of Appellate Procedure**, on November 12, 2001, Appellant Akers served his "BRIEF FOR

APPELLANT" which contained indisputable arguments and authorities in support thereof with respect to the issue of whether his herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" must remain in the United States District Court for the Middle District of Tennessee, Nashville Division. [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #6]

(vii) Thereafter, the Defendants-Appellees Todd M. Layne and Donald Shannon served an **undated** "MOTION OF APPELLEES, TODD M. LAYNE AND DONALD SHANNON, TO DISMISS APPEAL FOR LACK OF JURISDICTION" [see "CA6-02'", page 7 of 8, Item #8] **in identical manner – even with respect to the very same clerical errors**, ***viz***, "28 U.S.C. § 406" & "28 U.S.C. § 291" - further "echoing" the arguments set out in the "MOTION TO DISMISS APPEAL/REPLY TO RESPONSE OF AKERS" of Defendant-Appellee Katherine H. Witt and the same was received by Akers at Post Office Box 3648; Brentwood, Tennessee 37024 on November 19, 2001.

(viii) On November 16, 2001, Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, by

and through their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, served their "...MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTIONS TO DISMISS", again asserting defenses of "judicial and prosecutorial immunities" and arguing that "judicial economy will be served"..."if they are not burdened with

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responding to a frivolous appeal on the merits if this Court agrees it lacks jurisdiction over the appeal in the first place". **Inexplicably, this "motion" was not entered on this Court's Docket until 11/27/01**. [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #12]

(ix) On November 19, 2001, Defendants-Appellees John J. Vaughan, M.D., and Allen I. Rushing served their "MOTION OF APPELLEES JOHN J. VAUGHAN, M.D., AND ALLEN I. RUSHING TO DISMISS APPEAL", asserting that Akers' hereinabove appeal should be dismissed pursuant to Title 28 U.S.C. § 1291 and classifying Akers' herein appeal as, essentially, "[a petition for] an extraordinary writ". [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #10]

(x) On November 26, 2001, Akers timely served his "RESPONSE & OBJECTIONS TO: "[Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz] MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTIONS TO DISMISS" **in strict accordance with Rules 26 & 6 CIR. R. 27(e)(2) of the Federal Rules of Appellate Procedure**, specifically addressing, responding to and "OBJECTING" to

all those theretofore issues raised in the Defendants-Appellees' various motions with respect to the dismissal of Akers' herein appeal and/or various motions to stay the briefing schedule pending disposition of motions to dismiss. [see "EXHIBIT CA6-05'" appended hereto]

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(xi) On November 27, 2001, Deputy Clerk of the United States Court of Appeals for the Sixth Circuit, Diane Schnur, issued her "letter/order/directive" placing the "Briefing Schedule" as previously issued by the Court "in abeyance pending the disposition of ...Appellee's motion to dismiss for lack of jurisdiction"; to which,

(xii) Akers timely served his "MOTION FOR RECONSIDERATION" on December 7, 2001,[3] in which all theretofore issues raised by the Defendants-Appellees were specifically and extensively addressed in the form of "responses" and/or objections thereto and pointing out to this Honorable Court that the herein Defendants-Appellees are engaged in what can only be fairly termed as "delay tactics" utilizing nothing more than the strategies of confusion and delay.

(xiii) Kentucky's Assistant Attorney General, D. Brent Irvin has already signaled his intent to continue to thwart the "due process" sought by Akers in this civil action by way of Irvin's threat, *viz*, "[t]he State Defendants will renew their motion to dismiss this case after the remand" [see "EXHIBIT 'CA6-06'", page 2, lines 18 & 19]. Apparently, the conspiracies alleged in Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. §

1983; & TITLE 42 U.S.C. § 1985(3)" filed in United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000, ...

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[3] Akers hereby acknowledges that the "APPENDIX" included therewith was defective due to a mechanical malfunction of the copier utilized [see EXHIBIT 'CA6-02'", page 7 of 8, Item #10] . The herewith "APPENDIX" is intended to supersede, in its entirety, the "APPENDIX" served as an integral part of Akers' "MOTION FOR RECONSIDERATION" on December 7, 2001. Akers humbly apologizes to this Honorable Court and all parties for any inconvenience as the result thereof.

...continue unto this very day and it is now clear that **the Defendants-Appellees <u>will stop at nothing</u> to prevent or delay this case from proceeding - <u>without regard</u> for "judicial economy"; the First Amendment to the United States Constitution; any of the other Constitutional, Statutory, or Common Law provisions as cited within Akers' Complaint & Memorandum; <u>or any of the "authorities"</u> cited in support thereof**. Again, an "Amended Complaint" will be tendered accordingly by Akers.

(C) Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government "concurs", "adopts", and incorporates the same "as if fully set forth [therein]" an unidentified "motion to stay further proceedings pending motions to dismiss and to stay filing of briefs pending the motions to dismiss". It can only be presumed that they refer to the "motion" of Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, by and

through their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, as detailed in hereinabove ¶ 2(B)(vii). **In response**, Akers hereby re-states and reiterates his responses thereto as detailed within his "RESPONSES & OBJECTIONS [THERETO]" as detailed in hereinabove ¶ 2(B)(ix).

(D) Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government "requests that the appeal of the Appellant, James G. Akers, be dismissed and that further proceedings be stayed until disposition on the motions to dismiss and to any and all other relief to which the Appellee is entitled" [page 1, ¶ 3]. **In response**, Akers hereby re-states, reiterates, and amends his response and objections thereto as follows:

(a) In essence, Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government, by and through their purported counsel, Acting Director of Litigation for the Lexington-Fayette [Kentucky] Urban County Government, Theresa L. Holmes, ask this Honorable Court to grant a continuance of the "Briefing Schedule" which has been set by this Honorable Court and which has already been complied with by Akers by means of his timely "BRIEF FOR APPELLANT", as properly served on November 12, 2001, and filed with the Court on November 13, 2001. As the bases for her "motion", Defendant-Appellee Miller:

(i) asserts that "[m]any of the named appellees...have filed potentially dispositive motions to dismiss the appeal on the ground that this Court lacks jurisdiction to consider an appeal from an interlocutory order transferring Akers' case from the United States District Court for the Middle District of Tennessee to the United States District Court for the Eastern District of Kentucky;

(ii) minimize that "[Akers] has responded to the "motions [to dismiss]", ...essentially arguing he cannot get a fair trial in Kentucky";

iii) argue that "judicial economy will be served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss";

(iv) **again** argue that they have "absolute immunities and prosecutorial immunities from suit which shields them from defending Akers' underlying claims";

(v) label Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)"as a "frivolous but vexatious civil rights action"; &

(vi) assert that they should not be "burdened with responding...

...to a frivolous appeal on the merits if this Court agrees that it lacks jurisdiction over the appeal in the first place."

(b) **In the same hereinabove order** as the pleadings presented now by Miller in the same manner as previously presented by Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, **Akers hereby responds and/or objects thereto** as follows:

(i) Indeed, "[m]any of the named appellees have filed [purportedly] dispositive motions to dismiss the appeal on the ground (sic) that this Court lacks jurisdiction to consider an appeal from an interlocutory order transferring Akers' case from the United States District Court for the Middle District of Tennessee to the United States District Court for the Eastern District of Kentucky" pursuant to provisions of Title 28 U.S.C. § 1291. However, Akers maintains that the Defendants-Appellees misapprehend Title 28 U.S.C. § 1291 in context

with the "Collateral Order Doctrine" as set forth in **Clemence v. Clemence, 8 Kan. App.2d 377, 658 P.2d 368 (1983)**, i.e., "'Collateral order' doctrine allows appeal from interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; such order is, for purposes of appellate jurisdiction, 'final order'"; **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order is appealable under § 1291 **only if it falls within the *Cohen* doctrine**." (emphasis added); ...

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...**Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception** is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

(ii) Consistent with their history of extracting minute and/or subordinate excerpts from the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky and, then, exacerbating the context thereof for their own convenience and/or exploitation, the Defendants-Appellees" minimize that "[Akers] has responded to the "motions [to dismiss]",

...essentially arguing he cannot get a fair trial in Kentucky". **The Appellees are only attempting to divert this Honorable Court's attention away from the real issues** as presented in ARGUMENT(S) III & V of Akers' "BRIEF FOR APPELLANT" as filed with the Court on November 13, 2001, i.e.:

"The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All 'expert witnesses' required by Akers at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all 'lay witnesses' who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle...

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...Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the 'whereabouts' and 'demeanor' of Akers during the time period encompassing his fraudulent 'First Degree Stalking' conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer [has] the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S. District Court for the

Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, every witness conceivably required by the Defendants-Appellants have already testified with respect to **every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District and Circuit Courts. All such testimony is mechanically-recorded audiotapes and/or videotapes and can be utilized, to the extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. Akers has no such luxury.

This Honorable Court is asked to consider the following likely scenario in the event the 'ORDER' of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration within Kentucky, is compelled to re-enter the jurisdiction of the herein Plaintiffs-Appell[ees] for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The Defendants-Appellees, realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118 of Akers Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [supra, page 21 thereof];
>
> (c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for 'God only knows' how long;
>
> (d) Akers' herein 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c);

TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE'; &

(e) The herein Defendants-Appellees escape liability and exposure of corruption.

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The herein Defendants-Appellees have comitted equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and not even the Federal Courts can guarantee that those same Defendants-Appellees will fail to do so again in order to prevent this case from going forward – thereby avoiding exposure of the corruption within their ranks.

Truly, the 'ends of justice' require venue for Akers' 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)' to remain in the United States District Court for the Middle District of Tennessee at Nashville. ¶...Additionally, Akers would point out that he has made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the ominous perils to Akers if **ever returning to anywhere** within the jurisdiction of the herein Defendants-Appell[ees], e.g.,

> 'The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to 'more of the same' oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, ***et seq.***, and Title 42 U.S.C. §§ 1983 & 1985 by those

Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18"; & "**BRIEF FOR APPELLANT**"at pages 26 - 29].

(iii) The Defendants-Appellees argue that "judicial economy will be served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss". What the Defendants-Appellees are **really arguing is that they, themselves, would be "served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss"** inasmuch as **they cannot tender a brief of their own** which provides any meritorious defenses or arguments in opposition to those issues contained within Akers' "BRIEF FOR APPELLANT", as served on November 12, 2001. Akers has already honored the "Briefing Schedule" as set by this Honorable Court; shall continue to do so; hereby "**OBJECTS**" to the Defendants' Appellees' request for any further delay in this appeal; and asserts that such a course of action as requested by...

...the Defendants-Appellees would be the equivalent of granting a "ceasefire" to the Al Qaeda – thereby allowing it to: (a) arrange for escape routes; (b) reassemble, resupply, & regroup in some unknown location; and, then, (c) plan and implement further terrorist attacks upon additional innocent victims.

(iv) The Defendants-Appellees **again have the audacity** to argue that the they have "absolute immunities and prosecutorial immunities from suit which shields them from defending Akers' underlying claims" – and **Akers' response is the same** as it was every other time the Defendants-Appellees have attempted to assert this ludicrous "defense", i.e.:

"On December 8, 2000, Kentucky's Assistant Attorney D. Brent Irvin (hereinafter "Irvin"), served his "MOTION TO BE PERMITTED TO PRACTICE IN THIS PARTICULAR CASE WITHOUT LOCAL COUNSEL". Irvin's said "Motion" particularly underscores the particular difficulties with which Akers has been faced from the very outset of his so-called "Domestic Relations" matters, i.e., **defending against the vast resources of the entire Commonwealth of Kentucky as applied to personal agendas of private individuals in their private capacities**. Irvin now seeks to shield Defendants Clark, Overstreet, Red Corn, Ferguson, and Swartz from their clearly unconstitutional and otherwise unlawful acts, by attempting to invoke Eleventh Amendment immunities and, thereby, allow them to hide behind the innocent taxpayers of Kentucky. In Akers' Complaint, it is obvious that Akers has not named either the Commonwealth of Kentucky **or** the innocent taxpayers of Kentucky **or** either of the Defendants who Irvin purports to represent in any of their respective official capacities. The mere fact that those said Defendants committed unconstitutional and otherwise unlawful acts in their "private capacities" and then committed specific acts in the furtherance thereof in their respective "official capacities", **without jurisdiction**, does not relieve them of their liabilities as "persons" under Title 18 U.S.C. §§ 2, 3, 4, 5, 1964(c); Title 42 U.S.C. §§ 1983 & 1985(3); and those other related statutory provisions cited in Akers' Memorandum. Moreover, it is doubtful that Irvin's representation of those Defendants he purports to represent is even permissible under the Constitution, laws, or regulations of the Commonwealth of Kentucky absent a public referendum specifically authorizing the same." [D.E. #46 at ¶ 2]

"It is preposterous for the herein defendants to assert that the Eleventh Amendment (or other provision) to the United States Constitution was ever intended to afford immunities for criminal acts or, indeed, **any other act** in direct violation or contravention thereof. Moreover, it is Akers' position that the fraudulent extradition and/or kidnapping of Akers from his home State of Tennessee effected a "constructive waiver" of sovereign immunities;[4] that the lack of "subject matter" and "personal" jurisdiction in so doing constituted an "absolute waiver" of sovereign immunities;[5] that representation of any of the herein defendants by the Attorney General's Office of the Commonwealth of Kentucky constitutes an "intentional and actual waiver" of sovereign immunities; and that the obvious elements of "fraud","conspiracy", and "malice", ***inter alia***, pervasive within the activities of the remaining defendants invalidates any claims of immunities by them.

A representative analogy would be:

> Parties B through Z conspire to and, in fact, carry out the criminal act of robbing Victim A. An integral part of the conspiracy of Parties B through Z is an agreement that, in order to prevent Victim A from filing criminal charges against them, Parties B through Z will devise, implement, and effectuate fraudulent criminal charges **against Victim A** so that; when Parties B through Z are called to and, in fact, do testify against Victim A in his criminal trial, Parties B through Z (who are the actual criminals in the overall matter)_acquire immunities from their testimony against Victim A; then assert a defense of "qualified immunity" against prosecution for "conspiracy" against and "robbery" of Victim A.[6]

Surely, the common law permits no such immunities for Parties B through Z. [D.E. #68 at ¶ (a)(2)(E); & D.E. #75 at ¶ (5)(V)(E)(i)]; &

"Defendant Kelly acknowledges that he is not entitled to any immunities in this action. However, to whatever extent he supports the arguments of any of his co-defendants respecting any such alleged immunities, Akers hereby responds that **neither are any of Kelly's co-defendants entitled to immunities** inasmuch as they have committed **unlawful acts** in their **private capacities** and, then, perpetuated those acts in their **official capacities, without "personal" or "subject matter" jurisdiction**. [see, e.g., **Robichaud v. Roman, C.A. 9 (Ariz.) 1965, 351 F.2d 533**, i.e., "Title of office, **quasi-judicial or even judicial**, does not of itself immunize officer from claim of damages under this [Title 42 U.S.C. § 1983] (emphasis added); **Henzel v. Gerstein, C.A. 5 (Fla.) 1979, 608 F2d 654**, i.e., "The 'absence of jurisdiction' exception to rule that a judge is absolutely immune from civil rights damage liability for acts within his judicial capacity, **except when he acts in absence of all jurisdiction**, refers to situations in which a judge acts **purely in a private capacity**" (emphasis added); and **Sparks v. Duval County Ranch Co., C.A.5 (Tex.) 1979, 604 F.2d 976, affirmed 101 S.Ct. 183 449 U.S. 24, 66 L.Ed. 2d 185**, i.e., "Rule of judicial immunity from damages, with a single bright-line exception, *viz.*, **a judge is not protected if he acts in 'clear absence of all jurisdiction'**, is as broad as, but no broader than, necessary." (emphasis added) [D.E. #78 at ¶ (2)(V)(i)]

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[4] See Akers' Complaint at ¶¶ 56 through 68, & ¶¶ 70 through 79; and parallel ¶¶ E-56 through E-68 together with FN66 through FN71 thereto, E-70 thru E-79 together with FN72 through FN75 thereto of accompanying Memorandum.

[5] See Akers' Memorandum at ¶ 81 together with FN81 & FN82 thereto.

[6] See Akers' Complaint at ¶¶ 2, 3(d) thru 3(g), 4(d), 5, 10(a) thru 10(w), 7 [(sic) - should be "11"], 12, 24, 31 thru 44, 47, 48 thru 50, 56, 58, 64, 65, 66, 68, 70 thru 89, 91, 96 through 104, 106 thru 112, 115, 117, 118, 121 thru 155, and "PRAYER(S) FOR RELIEF" of Akers' Complaint; and ¶¶ A-2, A-3, A-4, E-1, E-2, E-4 together with FN40 thereto, E-8, E-9, E-11, parallel ¶¶ E-12 together with FN41 thereto, E-24, E-31 thru E-44 together with FN44 through FN57

thereto, E-47 together with FN59 thereto, E-48 thru E-50 together with FN60 through FN62 thereto, E-56, E-54 together with FN65 thereto, E-56 together with FN66 thereto, E-58, E-64, E-65, E-66 together with FN70 & FN71 thereto, E-68, E-70 thru E-89 together with FN72 through FN95 thereto, E-91 together with FN97 thereto, E-96 through E-104 together with FN101 through FN105 thereto, E-106 through E-112 together with FN106 through FN127 thereto, E-115 with FN128 thereto, E-117 together with FN131 thereto, E-118 together with FN133 thereto, and E-121 through E-129 together with respective FN134 through FN136 thereto of Akers' Memorandum.

(v) The Defendants-Appellees label Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as a "frivolous but vexatious civil rights action". The term "frivolous" is defined as follows:

> "Of little weight or importance. **A pleading is 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay** or to embarrass the opponent. **A** claim or **defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense**. Frivolous pleadings may be amended to proper form, or ordered stricken, under the federal and state Rules of Civil Procedure." [Black's Law Dictionary, Sixth Edition, 12th Reprint, 1998, emphasis added]

In view of the history of this case, Akers suggests that perhaps it is this Honorable Court who should decide whose pleadings have been "frivolous".

WHEREFORE, in view of the foregoing, the Plaintiff-Appellant, James G. Akers,, **without counsel**, will not ask that the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, be "STRICKEN" from the record as would clearly be warranted pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, but will simply ask and pray of this Honorable Court to "**DENY**" the same but allow it to remain an integral part of the Official Record on Appeal as an example of the manner in which the herein Defendants-Appellees have attempted to unduly burden the cost of this litigation while, at the same time, unconstitutionally deprive Akers of his rights and privileges provided for under, ***inter alia***, the First Amendment to the United States Constitution.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellee
Post Office Box 3648
Brentwood, Tennessee 37024
4708 Trousdale Drive
Nashville, Tennessee 37220
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN**

P. BISHOP, et al, Defendants-Appellees."; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**RESPONSE**" to the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, via "**UNITED STATES MAIL-FIRST CLASS**", on legal counsel for the Defendants-Appellees as follows: **(Listing of served Parties and/or respective Counsel-of-Record omitted from instant Petition for Writ of Certiorari. See official record for listings.)**

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 21st day of December, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large
My Commission Expires: 03/26/2005